This is your copy of the Draft Report on planning and development reform in Ontario.

Land use affects the daily life of each of us. Please review the contents and let us know your reactions to the proposals in writing and/or at upcoming public forums.

Ontario

New Planning for Ontario

December 18, 1992

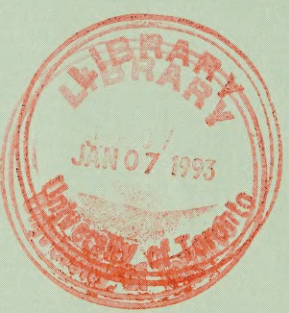
Canadian Cataloguing in Publication Data

Commission on Planning and Development Reform in Ontario.
Draft report of the Commission on Planning and Development Reform in Ontario

Commissioners: John Sewell (Chair), George Penfold, Toby Vigod.
Issued also in French under title: Rapport provisoire de la Commission sur la réforme de l'aménagement et l'exploitation du territoire en Ontario.
ISBN 0-7778-0515-4

1. Land use — Ontario — Planning. I. Sewell, John, 1940- .
II. Penfold, G. E. (George Edward). III. Vigod, Toby, 1951- . IV. Title.

HD319.057C65 1992 346.71304'5 C93-092500-9



Printed on recyled paper

Ce document est aussi disponible en français

New Planning for Ontario
Commission on Planning and Development Reform in Ontario

Nouvel aménagement du territoire pour l'Ontario
Commission sur la réforme de l'aménagement et l'exploitation du territoire en Ontario

December 18, 1992

Dear Reader,

We are pleased to provide you with a copy of the draft Report of the Commission on Planning and Development Reform in Ontario.

This draft Report presents proposals for an improved planning system for Ontario. These ideas emerged from public forums and meetings, discussions, and submissions made to the Commission over the past 15 months. They will be familiar to readers of our newsletter, *New Planning News*.

In brief, the draft Report recommends clearly articulated provincial goals and policies that incorporate environmental and other considerations; enhanced municipal planning responsibilities; clearer relationships between levels of government; earlier, more comprehensive public involvement; and a more timely and efficient process for decision-making and dispute resolution.

The draft Report allows us an opportunity to set out these proposals with a considerable amount of supporting detail. We would not have been able to reach this stage of our work were it not for the astounding amount of time, energy, and attention given by many of you to the problems of planning and to possible solutions. As Commissioners, we feel we have been part of a group effort to describe what a reformed planning system in Ontario would look like.

At this point, we need comments and criticisms to refine these proposals and turn them into a viable program for reform that has wide support. Your ideas will be most welcome either in written submissions sent directly to us or at the public forums we will be holding across the province in February and March 1993. (Please see timetable on the back cover.)

We expect to complete our Final Report in May 1993, so we need to hear from you no later than March 26, 1993.

John Sewell George Penfold Toby Vigod

John Sewell George Penfold Toby Vigod

We need your comments on this draft Report

Public Forums

Public forums on this draft Report will commence in mid-February, 1993. Please see the timetable on the back cover. Individuals or groups planning to make oral presentations at one of the Commission's public forums are encouraged to provide their material in writing before the forums. To make an oral presentation (10 minutes maximum), call or write to us at the address below.

Written Submissions

Written submissions are welcome any time until March 26, 1993. We will need time to review them for our Final Report, which we intend to complete in May. They can be sent to the Commission at the address below.

New Planning for Ontario
180 Dundas Street West,
22nd Floor,
Toronto, Ontario M5G 1Z8

Tel: (416) 325-8734
Fax: (416) 325-8739
Toll-Free: 1-800-267-4317

Everyone on our mailing list will receive a detailed summary of the Commission's Final Report.

Everyone on our mailing list will automatically receive a **detailed summary** of the Commission's Final Report.

Copies of the **full version** of the Final Report will be available on request.

Please fill in the coupon below if you know now that you wish to receive the **full version** of the Final Report. Send the coupon by fax or mail to:

New Planning for Ontario
180 Dundas Street West,
22nd Floor,
Toronto, Ontario, M5G 1Z8

Fax (416-325-8739)

I/we would like to receive the **full version** of the Final Report

NAME

ADDRESS

POSTAL CODE

I would like the report in English ____

J'aimerais recevoir le rapport en français _____

Contents

1 Mandate and Approach

The Commission on Planning and Development Reform in Ontario was appointed by the Minister of Municipal Affairs on June 12, 1991. The Commission was given a broad mandate to recommend changes both to the *Planning Act* and to related policy that would restore integrity to the planning process, would make that process more timely and efficient, and would focus more closely on protecting the natural environment. The Commission was specifically directed to consult widely and submit its Final Report within two years.

The two-year timeframe for the Commission's Report means the recommendations will come forward in time for legislation to be introduced in late 1993. The Commission is authorized to continue its activities after submission of its Final Report, until the end of August 1993, thus being available to assist with details of transition.

The Commission set out with the aim of seeking and recommending a package of reforms that comes to grips with the problems in planning and the planning process, is acceptable to the public and those involved in planning, and has a realistic possibility of being implemented.

Accordingly, we decided early on that our key task was to find common ground among the various players involved in planning. Rather than taking an abstract and distanced approach, we decided the solutions to questions about planning lay with planners, developers, citizen activists, environmentalists, farmers, municipal politicians and staff, provincial staff, and others across the province who work with the planning process on a daily basis.

As Commissioners, we began working full-time on September 1, 1991. We agreed our organization would be small enough to allow everyone to work closely together: in all, there are seven full-time staff, several part-time staff, and consultants with special expertise in communications, writing, and design. Since there was already a large amount of research to draw on, we agreed we had little need for independent research. We decided a senior researcher on staff could meet most of our needs, and indeed we have contracted only one piece of research.

To begin our work, we needed a reasonable idea of the direction in which planning decisions should head. This meant trying to articulate a set of goals and policies for planning in Ontario. Two techniques for arriving at draft policies were rejected. Going to the public with a blank piece of paper and saying "what do you think goals for a new planning system should be?" might appear useful, but would probably produce little more than stock responses. It also seemed much too limited to have the three of us as Commissioners write down and circulate our personal ideas for discussion. Instead, we decided to use working groups to develop a first set of draft goals and policies.

In the fall of 1991, we pulled together six working groups to look at planning policies for different areas of the province. The areas of focus were urban, urban

fringe, rural and small centre, cottage country, Northeast Ontario, and Northwest Ontario. Each group consisted of about 20 members representing a wide variety of interests. Participants were selected by the Commission according to three criteria: they were well-respected advocates of the interests they were representing; were interested in seeing what kind of common ground existed; and were able to attend three or four two-hour meetings every second week. At this early stage, we asked them to participate independently of any organization they might represent. Minutes were circulated to assist in the discussions.

The ideas suggested by the working groups, and lists of group members, were published in the November/December 1991 and December 1991 issues of our newsletter, *New Planning News*. Comments made in January 1992 at public forums, along with written submissions, led to reconsideration and a second draft of goals and policies, published in the April 1992 newsletter. This second draft was subject to further rounds of forums, additional written submissions, and more amendments, and has evolved into the proposals found in this draft Report.

Our review of the planning system is being conducted through a process based on broad public consultation. We therefore felt it would be sensible to ask the Minister to consider the consultation on the policies proposed in this draft Report to be the consultation required under section 3 of the *Planning Act* prior to the adoption of policy statements by the government. The Minister has agreed to our request, with several conditions. His letter to the Commission appears at the end of this Report.

A similar working group approach was used to develop ideas about reforming the planning process. Groups were constituted in February 1992, after the Commission had already received many comments at the January forums, in written submissions, and at the myriad of meetings held during the previous four months. From these comments the Commission was able to generate a draft paper outlining issues, questions, and ideas about the planning process. This paper was sent to the groups in advance of meetings and used for discussion. Four groups were established, in Toronto, Sudbury, Kingston, and London, and each met twice.

Two other groups were formed to provide input and criticism: an interministerial group, made up of representatives from the key ministries involved in planning at the provincial level; and a chairs group, made up of representatives of approximately 20 major organizations in the province with a stated interest in the work of the Commission. These groups have acted as sounding boards.

Other working groups were created in mid-1992 to look at particular problems. A small group was pulled together to examine development control issues such as site planning, sewage allocation, site alteration, and development standards. A larger group met to make proposals to clarify the relationship between the *Environmental Assessment Act* and the *Planning Act*. Another group met to discuss ideas for social policy statements.

It was clear almost from the start that special attention was needed to address planning in Northern Ontario. Preliminary ideas for reform originated in discussions with the Northern goals groups, and further meetings were then held. An extremely productive weekend, organized by the Northern Ontario Municipal Association, was spent at Quetico Centre in July 1992 with several dozen representatives from municipalities and other organizations from Northwestern Ontario. Subsequently, we met in Sudbury with a similar group from Northeastern Ontario.

One of our early decisions was to publish a newsletter, *New Planning News*. We hoped the newsletter would serve three purposes: present proposals for comment; inform readers of our schedule and the status of our

work; and provide information on specific issues. We wanted the newsletter to appeal to a wide audience and draw attention to planning issues, and so a journalist was retained to write news features about planning issues based on interviews with people from around the province.

Eight issues of the newsletter have been published. The *News* is mailed to more than 16,000 addresses, and on average a further 9000 copies of each issue have been distributed at meetings, conferences, and other events attended by the Commissioners. The *News* is published in both English and French editions.

The collaborative and open process we have used has meant we have been able to present ideas for consideration at an early point. This approach has given us the flexibility to react constructively to comments and criticisms and to incorporate appropriate changes. But an open process does have its costs: when we came up with bad ideas, everyone got to see them.

The clearest example of this pitfall concerned our proposals to address the issue of failing septic systems. In the November/December 1991 *New Planning News*, we put forward a draft policy that "the use of septic tanks for new development will be discouraged and, in the expectation that alternatives will be developed, will be prohibited after January 1, 1996." It looked like a good idea at the time, but there was widespread concern and criticism. People pointed out that deteriorated water quality had much to do with inappropriate installation and poor management of existing septic systems. Banning septic tanks for new development does nothing for systems malfunctioning right now.

The criticism was convincing. In the second draft of planning goals, published in the April 1992 newsletter, we indicated our earlier proposal was no longer on the table and that the focus should be on properly planned development and regular inspections and pump-outs of septic systems.

What has been remarkable about this process of advancing ideas, getting feedback, amending, and republishing is that the end result is never known in advance. The proposals in this draft Report have truly emerged from the process. None of the Commissioners would have predicted in June 1991 that these would be the proposals actually brought forward in this draft.

The sense of innovation surrounding this process has made the long hours enjoyable. The public forums have proven a valuable means for gathering public comment. Three rounds were held in 1992 at 28 centres across the province. Afternoon and evening sessions were held in each centre, and local councillors of surrounding municipalities were frequently asked to attend a special advance meeting for general discussion and questions. More than 1500 people attended these forums and over 450 presentations were made.

We also received a total of 927 briefs up to the end of November 1992. These submissions were augmented by a further 400 letters from people commenting on, or seeking more information about, the work of the Commission.

In addition to holding public forums, we hosted less formal public meetings and discussions in 31 communities. Typically, we sent notices to area residents named on our mailing list as well as to local councillors and officials. Attendance ranged from about 50 to 150 people. In all, about 3000 people attended these meetings, which, like the forums, gave us the opportunity to inform people of our activities and further develop our thinking in response to the criticism and comment we received.

As Commissioners, we attended a further 70 conferences, workshops, or other gatherings to deliver speeches or participate in discussions; we estimate that we talked to more than 10,000 people. In total we have, to date, spoken directly with some 20,000 people across the province. As often as possible, all three Commissioners appeared together at events.

We also maintained a regular schedule of meetings with organizations representing many interest groups, as well as with provincial ministries and agencies. Groups in this category include organizations such as the Ontario Professional Planners Institute, the Association of Municipalities of Ontario, the Land Use Caucus of the Ontario Environmental Network, the Ontario Home Builders' Association, and the Urban Development Institute. These meetings enabled us to keep informed of concerns, allowed people to learn of our ongoing work, and ensured that we continue to be realistic about achieving a reformed, and workable, planning system.

Since September 1991, the Commission Chair has had a biweekly, 10-minute slot on CBC's "Radio Noon" with host Christopher Thomas to talk, in diary form, about events in the Commission's life. The program reaches an audience of about 55,000 in Southern Ontario. Since September 1992, a similar arrangement has been in place with Benita Hart on CBC-Sudbury's "Radio Noon," which reaches communities in Northeastern Ontario.

Finally, the Commission's activities have been extensively covered elsewhere in the media. The issues that have become most newsworthy seem to be septic systems, intensification, protection of agricultural land, protection of wetlands and natural areas, and urban sprawl.

The Commission appreciates the time, energy, and hard work that many people have put into submissions, presentations, and meetings. We look forward to receiving many useful comments on the proposals in this draft Report, which will assist us in preparing our Final Report and recommendations. The Commission intends to submit its Final Report in May 1993.

2 Overview of Proposals

A reformed planning system should result in more timely decisions, better use of limited resources, improved opportunity for public involvement, and better protection of the natural environment. At the same time it should enhance the economic, social, and cultural quality of life.

The Provincial Role

To provide direction for planning, the province should adopt a comprehensive set of clearly written policy statements on such matters of provincial interest as the natural environment; community development and infrastructure; housing; the conservation of resources, including water and energy; agricultural land; and non-renewable resources. The Commission is recommending policies it believes the province should adopt as a first step, before introducing legislative amendments to the *Planning Act*. Provincial policies should be adopted by formal policy statements under the *Planning Act*. Ministerial guidelines should be advisory only.

Over the longer term, there are a number of initiatives required. An accessible, open process that includes wide notification of intentions and encourages public debate of issues and options should precede the adoption of provincial policy. A Provincial Planning Advisory Committee (PPAC) should be established to assist the province in developing policy, reviewing policy options, facilitating public debate, and making policy recommendations. PPAC should consist of representatives from the sectors most involved in planning matters — municipal organizations, the development industry, and environmental, farm, and resident groups, for example — and it should work closely with a new committee of deputy ministers responsible for interministerial coordination, the Interministerial Planning Committee (IPC).

Provincial policy statements would provide the planning context for both municipalities and the province itself. All planning authorities in the province would be required to act in a manner consistent with these policies.

The province also has an important role to play as planner, for matters such as provincial infrastructure, regional economic development, large-scale natural features, and intermunicipal issues. We recommend a restructured ministry called the Ministry of Municipal Affairs and Planning to act as a lead ministry charged with primary responsibility at the provincial level for provincial planning.

As well, the province should be responsible for the analysis, publication, and distribution of

information related to provincial policies and planning. It should undertake and publish research on issues needing more attention, such as septic systems, water conservation, and energy conservation. The province should also review municipal plans and significant development proposals, and be available to advise municipalities on provincial policy and any technical matters where provincial expertise would be helpful.

The Municipal Role

Municipalities should be responsible for planning within a broad framework of provincial policies. To strengthen the planning function, all municipalities should be encouraged to engage in strategic planning to establish community goals and expectations. The strategic plan should be a brief document, easily understood by everyone in the community, that would serve as a general guide for the next decade or two.

Broad planning questions — the natural environment, water and sewage, transportation, settlement patterns — should be addressed in a municipal plan at a level capable of dealing with the scope of these issues, namely by county and regional governments in Southern Ontario and by planning boards in Northern Ontario. Separated municipalities and cities in the North should be required to address these questions as though they were upper-tier governments.* Plans dealing with more detailed questions may be prepared by lower-tier municipalities, and they must conform to the upper-tier plans. Strong lower tiers will be expected to play an active role in plan-making, although some lower-tier municipalities may wish to have the upper-tier perform detailed planning functions. All municipal plans must be consistent with provincial policy statements.

Provincial approval of plans would not be required — save for the first plan adopted by upper-tier municipalities, separated municipalities, cities in the North, or planning boards, pursuant to the new comprehensive provincial policy statements. Until that initial plan is in place, however, existing approval arrangements should continue. If municipalities fail to plan, the province would continue to exercise plan- and development-approval functions.

Municipalities should plan on a watershed basis for development and changes that affect water, even though the watershed may extend beyond the boundaries of the municipality. Conservation authorities, where they exist, should play a significant role in preparing watershed studies. Joint-planning mechanisms should be strengthened to address infrastructure and other issues that extend or have an influence beyond municipal boundaries.

The integration of natural-environment considerations into the planning process will be accomplished in a number of ways. These include: establishing clear environmental policies; identifying, evaluating, and mapping environmental resources; setting out environmental matters that must be addressed in municipal plans; allowing municipalities greater control over site alterations; and monitoring. Further, the principles of environmental planning should be built into the *Planning Act*, and a class assessment procedure should be included in the Act for some municipal infrastructure.

The *Planning Act* should set out matters that must be addressed in upper-tier plans. Site-specific plan amendments should be strongly discouraged, and permitted only under certain conditions.

There should be one lot-creation process, which should generally be lodged at the regional or county level. Zoning, site-planning, and building

* The term "upper-tier municipality" means any county, or a regional, metropolitan, or district municipality. For discussion purposes, the roles and requirements of upper-tier municipalities noted here also apply to separated municipalities, cities in the North, and planning boards. A "lower-tier municipality" is any city, town, village, or township within a county or a regional, metropolitan, or district municipality, that has representation on its respective upper-tier council.

permits should remain functions of lower-tier municipalities, unless the lower tier decides to transfer these functions to the upper tier.

Public Involvement

Public involvement is essential to good policy formulation and plan-making. The *Planning Act* should set out requirements for public notification and involvement early in the planning process. PPAC should ensure public involvement in provincial policy-making and policy-planning. Municipalities would be required to set out the nature of public involvement at the beginning of the planning processes.

Notification should be required at the start of planning processes — when applications or plan amendments are first being considered. Municipalities should be required to keep a registry of everyone wishing to be notified of planning activities. Public meetings should be required, and every attempt should be made to establish common ground rather than emphasizing differences.

Resolving Conflicts

Some independent arbiter must be readily available to resolve disputes that will inevitably arise over the results of the planning process. The Ontario Municipal Board (OMB) should continue to play this role, but in a more timely fashion.

Any party — including the province — should be permitted to appeal a municipal planning decision. Within 30 days of receiving an appeal, the OMB should call a meeting of the parties to gain a preliminary understanding of the dispute, to explore the possibility of settling it, to narrow the issues, and to require an exchange of information so a hearing can be kept reasonably brief.

Intervenor funding should be available where a strong case is made that the public interest would not otherwise be well represented. At an early stage, the OMB should decide whether intervenor funding is appropriate and determine the party to provide the funds.

An Improved Process

Clear provincial planning policies and strong municipal plans should make it easier to know in advance what natural features will be protected, where development may best proceed, and under what conditions it should proceed. The reduced role of the province in approvals, and new procedures at the OMB, will lead to a much more timely process for decision-making.

Other Matters

The Commission has reported on a number of other matters that require careful attention. Of interest are proposals in regard to First Nations, Aboriginal, and Métis communities; ministerial powers; municipal control over the use of water bodies; provincial permits and licences; provincial funding for planning; and septic systems and sewage treatment. Recommendations are also made about development controls, including site plans, sewage and water allocations, site alterations, and minor variances.

Several issues beyond the mandate of the Commission have not been dealt with at all, or have been covered only very briefly. They include municipal restructuring, the planning of Crown land, provincial/municipal financing, and the property tax system.

3
Proposed Recommendations

This chapter summarizes and consolidates the recommendations in the text on a chapter-by-chapter basis.

Chapter 4
The Purposes of Planning

1 A "purpose" section should be added to the *Planning Act*, as follows:
The purposes of the Act are:
(a) to protect and conserve the natural environment and foster the well-being of ecosystems for the benefit of present and future generations; and
(b) to foster economic, cultural, physical and social well-being; and
(c) to provide for planning processes that are fair, open, accessible, accountable and efficient; and
(d) to encourage cooperation and coordination among differing interests.

2 All planning authorities (not just the Minister of Municipal Affairs) should have regard to a wide variety of matters of provincial interest. The proposed amendments to section 2 of the *Planning Act* are set out in Chapter 4 of this draft Report.

Chapter 5
Proposed Provincial Policy Statements

3 The province should adopt a comprehensive set of policy statements such as those proposed in Chapter 5 of this draft Report. These policy statements, which would provide a framework for provincial and municipal planning activities, should be adopted under the authority of the *Planning Act*.

4 Section 3 of the *Planning Act* should be amended to provide that actions taken by any planning authority or decision-maker must "be consistent with" (rather than the present wording, "shall have regard to") provincial policy statements adopted under the Act.

5 Only policy statements adopted under the authority of the *Planning Act* should have official status. Implementation guidelines should be advisory only.

6 The *Planning Act* should provide that, where there is a conflict between provincial policy statements, any statement that provides a prohibition on development should have priority over other policy statements.

7 Pending amendments to the *Planning Act*, the government should adopt, under section 3 of the existing *Planning Act*, the policy statements proposed by the Commission in its Final Report.

Chapter 6
The Provincial Role

8 The province should be responsible for the following planning functions: provincial policy development; provincial planning; advice to municipalities; and research and information. After a transition period, the province's approval authority for municipal plans and lot creation should be transferred to municipalities.

9 The province, through the new Ministry of Municipal Affairs and Planning (MAP), should be authorized by the *Planning Act* to develop provincial policy statements and provincial strategic and other plans for all or part of the province. The Act should set out the process to be followed in developing these policies and plans, including provisions for a Provincial Planning Advisory Committee (PPAC), public consultation, and Cabinet approval of final decisions on policies and plans. The Act should provide for provincial plans to be implemented through policy statements adopted under the legislation.

10 The Provincial Planning Advisory Committee (PPAC) should consist of 15 to 20 members representing diverse interests, appointed by the Minister of Municipal Affairs and Planning, with a mandate to direct public consultation and advise the Minister on provincial policies and plans. With approval of the Minister, PPAC could establish committees of individuals with diverse experience on particular issues to review policy matters; and, in the case of area plans, a committee representing a full range of local interests could be established.

11 An Interministerial Planning Committee (IPC) should be established, consisting of the deputy ministers from the ministries with the most direct interest in planning, with a mandate to coordinate policy and planning activities among provincial ministries and to work with the Provincial Planning Advisory Committee on provincial policy and planning. The IPC should be chaired by the deputy minister of the Ministry of Municipal Affairs and Planning.

12 The Ministry of Municipal Affairs and Planning should be given lead responsibility for provincial policy and planning with a specific mandate to coordinate provincial planning activities, including related studies, to monitor the effectiveness of provincial policies and processes, and to provide staff support to the Provincial Planning Advisory Committee and the Interministerial Planning Committee.

13 Ministries should provide advice to municipalities on the application of provincial policy statements to the municipal planning context and on technical matters, including the adequacy of technical studies.

14 Ministries should develop data bases, information, and mapping to assist in the application of provincial policies to the municipal context. They should also undertake research to address problems identified in the planning process.

15 The Ministry of Municipal Affairs and Planning should consider publication of a manual on required provincial permits and licences.

16 The Minister of Municipal Affairs and Planning should establish a Development Standards Committee of no more than 20 members representing the many sectors affected by, or with an interest in, development standards. This committee should be given a mandate to consult widely and within one year report to the Minister on a set of development standards that could serve as a municipal guide.

17 The province should provide grant programs to assist counties without county plans in developing them, to assist planning boards in Northern Ontario in developing plans and providing planning services in unorganized areas, and to assist with watershed studies.

18 The Interministerial Planning Committee should undertake a review to ensure that provincial grant and subsidy programs support provincial policy statements, and report to the Minister of Municipal Affairs and Planning within one year of the adoption of such statements.

19 The *Planning Act* should provide the Minister of Municipal Affairs and Planning with the authority to intervene in municipal planning activities. These powers should include:
(a) the authority to appeal any municipal planning decision to the Ontario Municipal Board within the same timeframe and subject to the same rules as other objectors;
(b) the authority to impose an interim holding order on a particular development site or area, effective for up to one year and renewable for no more than one year, pending the development of a provincial policy to address the provincial interest at issue;
(c) the authority to impose zoning orders in areas without local zoning controls; and
(d) the authority to remove plan approval and lot-creation authority from municipalities and planning boards in cases where there has been a series of decisions indicating that approvals given are not consistent with provincial policy statements or municipal plans, or where reasonable planning administration is no longer in place.

20 The *Planning Act* should be amended to remove the authority of the Minister of Municipal Affairs and Planning to issue declarations of provincial interest requiring that Ontario Municipal Board decisions be confirmed, varied, or rescinded by Cabinet.

Chapter 7
Planning and Aboriginal Communities*

21 The *Planning Act* should be amended to require municipalities and planning boards to provide notification to Aboriginal communities whenever there is a specific requirement in the Act to notify an adjacent owner or municipality, or a provincial or federal agency.

There may be other situations in which notification could be required, such as proposals for land on which an Aboriginal claim has been filed. Conditions for notification in such situations should be worked out between Aboriginal communities and municipalities or planning boards.

22 Municipalities and planning boards should be specifically authorized by the *Planning Act* to enter into agreements with Aboriginal communities on development, servicing, and other matters. This authorization should explicitly note that outstanding land claims are not prejudiced because of such agreements.

23 A protocol or agreement should be developed at the provincial level so that notice of development proposals or changes in use or tenure of provincially owned lands would be given to Aboriginal communities.

24 Where planning board areas are adjacent to Aboriginal communities or lands, or include lands on which there is a land claim, the *Planning Act* should provide the opportunity for Aboriginal representation on the board, subject to an agreement between the board and the Aboriginal community.

* In this chapter, the term "Aboriginal community" includes First Nations, Aboriginal, and Métis interests.

Chapter 8
The Municipal Role

25 All municipalities and planning boards should be authorized by the *Planning Act* to prepare and adopt strategic plans that address economic, environmental, and social issues important to the community. The strategic-planning process should include public involvement. A strategic plan should not be legally enforceable.

26 Upper-tier municipalities should be required by the Act to prepare and adopt a municipal plan.* Among other things, that plan should:
- Interpret provincial goals and policies into a regional context.
- Plan and coordinate regional infrastructure, including transportation, water, and sewage treatment.
- Establish urban and rural boundaries and settlement patterns.
- Address the general nature and distribution of employment and housing across the region.
- Address regional social issues, other regional responsibilities, and interregional issues.
- Protect the natural environment and agricultural and other resources.
- Establish a process to monitor change.

27 The *Planning Act* should provide that lower-tier municipalities may prepare and adopt detailed plans for the municipality or for one or more neighbourhoods, districts, or areas in the municipality. Lower-tier plans must conform to upper-tier plans. Where an upper-tier plan is amended, the lower tier must bring its plan into conformity within a reasonable period of time.

* For the purposes of these recommendations, the requirements of upper tiers (counties and regions) would also apply to separated municipalities, cities in the North, and planning boards. The term "municipal plan" refers to a plan prepared and adopted by an upper- or lower-tier municipality, a separated municipality, a city in the North, or a planning board.

28 Lower-tier plans may address the following matters:
- the detailed pattern of land use, density, and mix of uses;
- distribution of open space and parks;
- character of the community, including heritage, streetscape, and physical design;
- zoning, site plans, and other tools to regulate development;
- areas of mandated local responsibility, such as fire protection; and
- issues of special local interest, such as locally significant wetlands.

Lower-tier plans may address, in greater detail, any of the matters in upper-tier plans. Where there is no lower-tier plan, these matters will be addressed in the upper-tier plan.

29 Once a new plan for an upper-tier municipality, consistent with a comprehensive set of provincial policy statements, has been approved by the province and the municipality has a qualified planner on staff, authority to approve plans, plan amendments, and lot creation will be transferred to the upper-tier. Once a lower-tier plan conforming to an approved upper-tier plan has been approved by the upper-tier, authority to approve plans and plan amendments will be transferred to the lower-tier municipality.

30 The *Planning Act* should require that all municipal plans be consistent with provincial policy and be based on appropriate studies. Issues must be studied on an appropriate geographic basis.

31 The *Planning Act* should require that separated municipalities and cities in the North develop a plan addressing both broad and detailed issues. Separated municipalities should notify adjacent municipalities and counties of proposals and plans that have a cross-boundary impact, including amendments to municipal plans.

Planning in the North

32 In Northern Ontario, except for cities and the Regional Municipality of Sudbury, planning areas should be established to include municipalities and unorganized areas that share common interests and are within the same sphere of influence. Planning-area boundaries should generally be based on natural boundaries such as watersheds, and should reflect relevant administrative boundaries such as school boards and economic development areas.

33 Planning in these areas of Northern Ontario should be done by planning boards. Members of planning boards should be appointed by municipal councils, and elected from unorganized areas. Representation should generally be proportional to electoral population. Funding shares from municipalities and unorganized areas should be pro-rated by assessment.

34 The *Planning Act* should provide that the approved planning board plan applies to all municipalities and unorganized areas within the planning area.

35 The planning duties and responsibilities of planning boards should be similar to those of upper-tier municipalities.

36 The Minister of Municipal Affairs should establish committees from the North to make recommendations on the location and boundaries of planning areas.

37 Where Crown land is within or adjacent to a planning board's area, the Ministry of Natural Resources should be required to inform the board of proposals for that land and engage in a public planning process.

Municipal Plans

38 The *Planning Act* should include a comprehensive list of matters that must be addressed in preparing upper-tier plans, as set out in Chapter 8 of this draft Report.

39 Municipal plans should include maps of significant features referred to in provincial policy.

40 The *Planning Act* should require that prior to the preparation of any plan, general plan amendment, or area or neighbourhood plan amendment, a report be prepared for public review and considered by council, containing:

- a general description of the purpose of the proposed plan review;
- the general scope of the proposed plan review;
- proposals for public consultation and participation by interested agencies; and
- the proposed timetable for plan preparation and consideration.

41 The Act should require that preparation for all plans and plan amendments include the following steps:

- Identify problems, priorities, needs, opportunities, and objectives.
- Identify the criteria by which to evaluate alternatives.
- Identify reasonable alternatives (including the "do nothing" option) for achieving objectives according to their general effects on the full scope of the natural, social, and economic environment (i.e., a broad definition of environment would apply) and their effectiveness in meeting objectives.
- Select and prepare alternative-plan concepts and compare and assess against the criteria to determine which best meet the objectives.
- Select and refine a preferred plan.
- Establish monitoring systems and contingency approaches.

Reasonable alternatives should be addressed at an appropriate level of detail. All steps in the process should be documented and reports made available to those interested. Public involvement should be required throughout the process.

42 The *Planning Act* should require that, in preparing plans regarding development and change affecting water, upper-tier municipalities must develop policies based on studies done on a watershed basis. Where there is increased pressure for development or decreased levels of water quality and quantity, sub-watershed studies should be undertaken. The upper tier should identify which studies will be undertaken on a priority basis. Conservation authorities should be given a clear mandate to prepare watershed and sub-watershed studies.

43 In cases where municipalities are unable to agree on a structure to undertake joint planning, an application may be made to the Ontario Municipal Board (OMB) for mediation by any municipality believing joint planning should occur. If the mediation fails, the OMB should be authorized to order a joint-planning structure and cost-sharing arrangement.

44 Lower-tier municipalities should be responsible for zoning, site-plan control, and minor variances, except where, by agreement, they transfer these responsibilities to the upper tier.

45 The Act should provide for plan amendments to be made under the following circumstances:
(a) Municipalities may initiate amendments to general policy at any time.
(b) Area and neighbourhood plan amendments should be permitted at any time.
(c) Municipalities may approve site-specific amendments under one or more of the following circumstances:
(i) the policies in the plan approved for the site were originally approved on the basis of information now found to be erroneous; or
(ii) the amendment is for the purpose of being consistent with changes to provincial or upper-tier policies or plans; or
(iii) the amendment is consistent with general policies in the plan and the proposal will result in significant public benefits.

46 Municipalities should be permitted by the Act to limit times during the year when applications for municipal plan amendments will be received, and in no case should that time period be less than 10 working days a year.

47 With regard to public involvement in the planning process, the Act should require that:
(a) All information, documentation, and staff reports in relation to plans and applications be available to the public.
(b) Council and committee meetings be open to the public, and decision-making regarding plans and planning be carried out publicly.
(c) Those affected by proposed changes be notified, in plain and simple language, in advance of decisions.
(d) Interested parties be given an opportunity to be heard at appropriate points in the process.

48 The following process should be established in the Act for plan creation and plan amendment:
(a) Publication of intent to consider policy change.
(b) Opportunity for public response, including at least one public meeting.
(c) Preparation and circulation of draft proposal (including alternatives).
(d) Opportunity for response, including at least one public meeting.
(e) Final decision-making.
(f) Notification of decision.

49 The Act should authorize municipalities to establish advisory committees.

50 The Act should require that upper-tier municipalities prepare comprehensive monitoring or "state of the environment" reports at least every five years to document changes in the municipality. To prepare a state of the environment report, municipalities should identify and select key indicators of local relevance to their natural, social, cultural, and economic environments, and then establish procedures for monitoring them.

51 The Act should require that plan review occur at least every five years (perhaps in conjunction with the state of the environment report), and, as part of the review, council should at a minimum hold a public meeting at which public comment should be received.

Lot Creation (Subdivisions and Consents)

52 There should be one system of lot creation. The requirements for subdivision applications now set out in the *Planning Act* should apply to all lot creation, except that in the case of an application to divide an area of land into two parcels, a survey should be required only as a condition of draft approval.

53 The *Planning Act* should assign responsibility for lot creation to upper-tier municipalities. This responsibility could be delegated to a lower-tier municipality where:
(a) upper- and lower-tier plans have been adopted under the proposed comprehensive set of provincial policy statements and the lower-tier plan is in conformity with the upper-tier plan; and
(b) the lower tier has a full-time qualified planner on staff; and
(c) any conditions set by the upper tier are met.

Whether at the upper- or lower-tier level, decisions about lot creation could be made by council, or delegated to a committee appointed by council or to a qualified planner on staff.

54 The *Planning Act* should require that development applications that may have the potential for impact on the environmental features and functions identified in provincial and municipal policies and plans be accompanied by an environmental impact statement appropriate to the scope of the project, considering and evaluating on-site alternatives, on- and off-site impact, and various mitigation measures. It is expected that smaller projects would not be subject to this kind of review. Council should not make decisions on projects until such statements are available.

Development Control

These recommendations will require amendments to the *Planning Act*.

55 Design guidelines should be authorized and legitimized by the Act, and municipalities should be encouraged to develop, with full public consultation, design guidelines for appropriate parts of the municipality and include such guidelines in the municipal plan.

56 The following recommendations apply to site-plan control:
(a) Current provisions of site-plan approvals should not be expanded to include colour, texture, type of materials, window detail, construction details, architectural detail, and interior design, except in heritage districts designated under the *Ontario Heritage Act*.
(b) Municipalities and planning boards should be permitted to develop procedures for public input into site-plan agreements.
(c) Appeals on site-plan questions may be made by the applicant or an upper-tier government.

(d) Authority for site-plan agreements should be widened to include:
  (i) off-site matters that relate directly to the development proposed;
  (ii) any requirement regarding phasing, transfer of density, bonusing, or infrastructure;
  (iii) conditions necessary for environmental protection and improvement, including storm-water management, site alterations, and noise;
  (iv) financial arrangements, including bonding.

(e) After notice to the owner, municipalities should be permitted to terminate conditions set out in site-plan agreements in cases of hardship or where circumstances have materially changed. Decisions regarding requests to terminate an agreement may be appealed by the applicant.

(f) Upper-tier governments and planning boards not otherwise exercising zoning functions should not be permitted to exercise site-plan control.

57 A municipality may adopt a development permit process for any part of the municipality, and delegate permit approvals to staff, provided the municipality:

(a) has adopted, after public debate, development permit zones defining standards, uses, and design guidelines for the affected part of the municipality, including general questions of form, density, use, and the provision of environmental impact statements; and

(b) has adopted procedures for public notification of applications for development permits; and

(c) has appointed an advisory committee consisting of a broad range of interests, such as developers, community leaders, and individuals with an interest in design, to advise staff on development permit applications; and

(d) has adopted a policy outlining conditions under which development permit applications will be considered by council rather than by the staff committee.

Appeals of development permit decisions may be made to the Ontario Municipal Board.

58 Municipalities may establish provisions in the municipal plan for sunset provisions on sewage and water allocations and to cancel, no sooner than 12 months after the municipality has adopted such policies, any allocation made before the policy was adopted.

59 Anyone should have the right to appeal sewage and water allocation decisions to the Ontario Municipal Board.

60 Municipalities may reserve sewer and water capacity for a reasonable amount of development, such as minor infill and second units, which might proceed without rezoning.

61 Municipalities should be permitted to set general policies permitting bonuses in defined areas in return for stated public benefits.

62 Municipalities should be authorized to permit any transfer of density if the municipal plan states the policies outlining the purposes and criteria of such transfers, and establishes geographical limits for development areas where land values are comparable.

63 The following recommendations deal with site alterations:

(a) Municipalities should be authorized to regulate tree cutting, vegetation removal, changes in elevation, placement and removal of fill, and removal of top soil and peat; and to designate areas and apply different levels of site-alteration control to different areas.

(b) Municipalities may define areas by current aerial photo as an alternative to surveys.
(c) To control tree cutting and other site changes in anticipation of new rules, municipalities may set interim controls in a particular area without prior public notice, provided notice immediately follows the decision and opportunities are then made for public debate and reconsideration.
(d) To deal with questions of proof, the defendant should be required to disclose the condition of the site prior to alleged alterations to show alterations did not damage the site in contravention of by-laws.
(e) Municipal officials may enter property for the purpose of inspections to ensure conformity with municipal by-laws.
(f) Adequate penalties and remedies should be provided in legislation for breach of site-alteration laws.

64 To legalize or provide for changes and additions to existing buildings or structures, municipalities may delegate to staff the authority to approve variances of up to 10 percent from controls, including setbacks, height, angular planes, density, loading spaces, parking, and coverage. No public notice is required in these cases. Where staff deny the request for variance, application can be made to the Committee of Adjustment.

65 Hearings and decision-making of committees of adjustment should be conducted in public.

66 The appeal period for Committee of Adjustment decisions should be shortened to 14 days from notification of the decision.

Municipal Infrastructure

67 Environmental review of municipal infrastructure projects, currently undertaken through the class environmental process of the *Environmental Assessment Act*, should occur under the *Planning Act*, and both statutes should be amended accordingly.

68 The Minister of the Environment should be authorized to approve the class environmental review (Class ER) processes for municipal infrastructure defined as "recurring, similar in nature, limited in scale, having only a predictable range of environmental effects, and being responsive to standard mitigative measures." Municipal infrastructure projects not meeting this definition should continue to be subject to the *Environmental Assessment Act*.

69 The *Planning Act* should be amended to require municipalities to apply the Class ER process to municipal and private infrastructure projects, as defined in Recommendation 68.

70 Where it is alleged that the project does not fall within the definition of class, or that the studies are inadequate or do not meet the requirements of the Class ER process, an appeal may be made to the Ontario Municipal Board.

71 Provincial and provincial agency undertakings should continue to be dealt with under the *Environmental Assessment Act*. The opportunity to designate large-scale private undertakings under that Act should continue.

Public Meetings, Notification, and Appeal Periods

72 Municipalities should be required by the *Planning Act* to maintain a registry of those requesting notification of planning matters in the municipality or in parts of the municipality. A modest fee may be charged for this service, and the municipality may determine the boundaries for parts of the municipality within which notice may be given.

73 The *Planning Act* should require at least two public meetings for consideration of plans, plan amendments, and comprehensive zoning by-laws. The first, to be held at the beginning of the process, should consider the need for the review of the plan or by-law and the process to be used for the review, including procedures for public involvement. The second should consider the final recommendations to council. Notification for these matters should be to the general public, those on the registry, boards of education, adjacent municipalities, upper- and lower-tier municipalities as applicable, ministries and provincial and municipal agencies and Aboriginal communities deemed to have an interest in the matter.

74 For rezonings, lot creation, minor variances, and site plans (where municipal policy requires notice), the Act should require at least one public meeting to consider the final recommendations to council. Notification for these matters should be given to owners and occupiers within 120 metres of the property subject to the change; in areas where a 120-metre radius reaches only the adjacent owner, notice should also be given to owners and occupiers of properties abutting adjacent properties. Notice should also be given to upper- or lower-tier municipalities as applicable, boards of education, ministries and provincial and municipal agencies, and Aboriginal communities deemed to have an interest in the matter, unless the municipality is notified that notice is not required.

75 Where notification must be given to the general public, it should be through a newspaper advertisement or by direct mail to those on the assessment roll, using plain and clear language. On-site signage is encouraged for site-specific changes or projects. It may contain a sketch, a brief description of height, bulk, and use, and telephone numbers where more information may be obtained.

76 Where reasonable, two or more applications on the same property should be dealt with concurrently (for example, lot creation and site-specific zoning).

77 Times for notification and appeals should be simplified and clarified. Specific proposals are set out in Chapter 8 of this draft Report.

Chapter 9
Conflicts, Disputes, and Appeals

78 It should be standard procedure that within 30 days after an appeal has been received by the Ontario Municipal Board (OMB), the Board convene a procedural meeting of the parties, chaired by a person assigned by the Board. This meeting is for the purpose of determining how best to process the dispute and resolve it in a manner consistent with provincial planning policies, including arrangements to disclose information, narrow issues, focus on the serious matters under dispute, and seek a settlement.

79 The *Planning Act* should be amended to provide for all appeals that, where the OMB member concludes at the procedural meeting that the appellant does not have an objection that merits a full hearing, the member may order a time and place for the appellant to make representations as to the merit of the appeal.

80 The *Planning Act* should be amended to provide unincorporated associations with status before the OMB; to authorize the OMB to impose monitoring and other terms and conditions to protect the environment; to eliminate Cabinet consideration of OMB decisions; and to allow for the approval of the unappealed portions of plans and comprehensive zoning by-laws when only site-specific appeals have been filed.

81 Legislation should provide for intervenor funding for hearings before the OMB, subject to criteria set out in Chapter 9 of this draft Report. Pending such legislation, the province should provide a sum of $500,000 a year so the OMB may institute such funding as soon as possible.

82 The OMB should be permitted to retain mediators to help with procedural meetings. Consideration should be given to the appointment of part-time members.

83 The *Conservation Authorities Act* should be amended to provide for appeals to the Ontario Municipal Board instead of the Mining and Lands Commissioner. If necessary, the Act should also be amended to clarify the mandate of authorities to address ecosystem protection matters within existing cut-and-fill regulations.

Chapter 10
Other Issues

84 The Ministry of the Environment should continue to set standards for and be responsible for the inspection and issuance of permits for private on-site and communal waste-treatment systems. The Ministry should also be responsible for inspections of private on-site and communal systems, after installation, every three years. The cost of inspection should be covered through a user fee.

85 In Southern Ontario, the Ministry of the Environment should consider entering into agreements permitting county and regional governments and separated municipalities (with the appropriate expertise) to assume the responsibility for installation inspections, the issuance of permits, and ongoing inspections of private on-site and communal waste-treatment systems. In Northern Ontario, these functions should primarily be the responsibility of the Ministry of the Environment.

86 Owners should be required to pump out septics regularly.

87 Counties and regions should be required to provide facilities for septage disposal. In Northern Ontario, this should be a local municipal responsibility.

88 The Ministry of Municipal Affairs and Planning should provide advice to municipalities on financial guarantees necessary and appropriate to address issues of capital replacement, maintenance, and liability for communal sewage systems.

89 The Ministry of the Environment should give a high priority to research on acceptable communal systems for sewage, as well as on on-site private systems that might be used in Ontario.

90 The Ministry of Municipal Affairs should develop a model for cost/benefit studies of development projects to assist municipalities on how to assess the fiscal impact of development options and proposals.

91 Cabinet should authorize negotiations with federal authorities to delegate to the province the administration of inland navigation. The definition of "inland navigation" should include recreational boating, including that on the Great Lakes and the St. Lawrence River, but not commercial shipping. Federally managed areas such as the Trent-Severn waterway might be excluded from this delegation.

92 Legislation should be amended to permit municipalities to plan for, and place appropriate water-use designations on, inland water bodies. The Ministry of Natural Resources should work closely with municipalities in developing and implementing these new designations.

93 The Ministry of Natural Resources should consider establishing a pilot project that brings together municipalities on the eastern shore of Georgian Bay to coordinate analysis and response to common problems. Such a project could include watershed studies, water-use planning, and recreational boating.

94 The Ministry of Natural Resources should form a task force of affected parties, including municipal and citizen representatives, to review outstanding problems with the *Aggregate Resources Act*, including priorities for extraction, levies, and notification for and operation of wayside pits. The task force should be requested to report before December 1, 1994.

Chapter 11
Transitional Matters

The proposed staging for the implementation of the recommendations is contained in the text of Chapter 11 of this draft Report.

4
The Purposes of Planning

Currently the *Planning Act* does not have a purpose section. Including such a section will provide greater clarity and direction to decisions made under the Act. As well, the matters of provincial interest now set out in section 2 of the Act should be updated to respond to matters now generally agreed to be important in planning. Further, *all* planning authorities should have regard for these interests, not just the Minister of Municipal Affairs, as the section now states.

The Commission recommends that the *Planning Act* be amended to state that the purposes of the Act are:

(a) to protect and conserve the natural environment and foster the well-being of ecosystems for the benefit of present and future generations; and
(b) to foster economic, cultural, physical and social well-being; and
(c) to provide for planning processes that are fair, open, accessible, accountable and efficient; and
(d) to encourage cooperation and coordination among differing interests.

Section 2 of the *Planning Act* should be amended to provide that, in exercising powers under the Act, the provincial government, its ministries, agencies, commissions and boards, the Ontario Municipal Board, and municipal governments, their agencies, commissions and boards, and all other planning authorities shall have regard to matters of provincial interest such as:

(a) the protection of ecosystems, including natural features and functions;
(b) the protection of the agricultural resource base of the province;
(c) the conservation of natural resources;
(d) the protection and conservation of heritage features of significant natural, architectural, archaeological or scientific interest;
(e) the efficient use and conservation of energy;
(f) the efficient use and conservation of potable water;
(g) the orderly development and efficient use of infrastructure and public services;
(h) the minimization of waste;
(i) the development of safe and healthy communities;
(j) the adequate provision and equitable distribution of educational, health, social and recreational facilities and programs;
(k) the provision of a wide variety of housing;
(l) the adequate provision and distribution of employment opportunities;
(m) the protection of the financial and economic well-being of the province and its municipalities;
(n) the coordination of planning activities of public bodies and private interests;
(o) the resolution of planning conflicts.

5 Proposed Provincial Policy Statements

Introduction

For the planning process to work effectively, there is a need for agreement on what planning is trying to accomplish. That direction should be set out in provincial policy.

Provincial policy statements are important because they provide direction to all planning activity. There is widespread agreement on the need for such statements, even though there may be some disagreement on the exact scope and detail of each policy.

Since 1983, the *Planning Act* has contemplated the adoption of policy statements, yet only four policies have been formally adopted: affordable housing; flood plains; mineral aggregate resources; and wetlands. While the idea of policy is not new, it has rarely been used, and governments have relied on guidelines and approval powers to provide provincial direction in the planning system. Thus, a critical first step in reforming the current planning system is to develop a comprehensive set of provincial policies.

The Commission has focused much discussion on the question of policies, and two drafts of policy ideas have been published in *New Planning News* (November/December 1991, December 1991, and April 1992). Because of the importance of policies for planning reform, and because of the interest shown, the Commission asked the Minister of Municipal Affairs to consider the consultation that the Commission will carry out on the proposed policy statements in this draft Report to be the consultation required under section 3 of the *Planning Act* prior to the government's adoption of policy statements. The Minister has responded positively to this request, thus allowing the government, if it so chooses, to consider adopting policy under the existing legislation after the Commission's Final Report is submitted in the spring of 1993. (The Minister's letter is reproduced at the end of this Report.)

Comments on intention, form, status, conflict, and scope of consultations should provide a context for the proposed policy statements, which then follow. Definitions of key terms in the policy statements appear at the end of the chapter.

Intention

Provincial policy must address questions of provincial interest. It should express values to which we aspire as residents of Ontario.

Policy is not intended to place yet more hoops in the way of municipalities or prospective developers. The intention of policy is to remove uncertainty so that those involved in municipal plan-making and those making development applications will know what would be acceptable under provincial policy. For example, the proposed policies would define natural features and functions to be protected in the municipal plan; one would then know in advance that these areas are not available for development.

Form

Among other functions, provincial policies set a framework within which municipalities plan.

People have different expectations for provincial policy. Some want it to be very general, without too much bite, so it can be easily translated into local circumstances as local decision-makers see fit. Others want it to be written in a way that will nail down all the details of implementation. The problem with the first approach is that it doesn't provide clarity or direction; with the second, that it doesn't provide the flexibility needed for application to local situations.

The Commission has tried to find some middle ground that provides certainty of direction and flexibility to adapt to local conditions. The following characteristics are desirable:

- Policy should focus on direction and results rather than on the detail of how implementation will occur or the means to be employed.
- Policy should be clear, understandable, comprehensive, and as brief as possible.
- Policy should be established under clear legal authority.

The proposed policy statements attempt to meet these criteria.

Status

In the short term, the Commission recommends that policy statements should be adopted under section 3 of the *Planning Act* as it now stands. Proceeding in this fashion permits the government to act in a timely fashion to establish provincial policy direction.

In the long term, however, the section of the Act enabling policy statements should be amended to strengthen their status. The current section 3 states that all planning authorities "shall have regard to" policies. Courts have interpreted this to mean only that a decision-making body cannot dismiss such a policy out-of-hand, which seems much too weak a status. The same objection would apply to a requirement to "consider" policies, or to be "compatible with" them.

There are other terms, such as "conform to," "comply with," "be consistent with," and "be in accordance with." One term is already in use in Ontario: the *Planning Act* requires that lower-tier plans must "conform to" upper-tier plans. Plans represent a resolution of conflicting policies, and thus conformity can be achieved. It is much more difficult to "conform to" a set of provincial policy statements where conflicts may not have been fully resolved.

Although there is little case law to help distinguish these phrases, some allow more flexibility than others. As noted, the desired term will provide certain strength of direction tempered by reasonable flexibility in local application. The Commission recommends that the Act be amended to state that actions taken by any planning body or decision-maker shall *be consistent with* policies adopted under the Act.

Only policies adopted under section 3 should have official status, and methods to amend these and introduce new policies should be clearly established. Guidelines and "informal policies" should not be binding. Accordingly, while policies may be supported by implementation guidelines of various kinds, these guidelines should be advisory only.

Conflict

In some cases, conflict will occur between policies expressed under the Act; this is to be expected when a number of desirable ends are sought. Good planning will help resolve some of these conflicts. Certain choices will have to be made both by the primary decision-making body and then, perhaps, by the Ontario Municipal Board concerning the degrees to which several directive policies will be met.

The Commission has given much consideration to questions of conflicting policies and to how conflicts might be resolved in favour of, rather than at the

expense of, the natural environment. One suggestion is that in cases of conflict, the health of the ecosystem will predominate. Another is that in case of doubt, the doubt will be resolved in favour of the natural environment.

We are not confident these suggestions clarify intentions — indeed, they might muddy the waters further, particularly if an applicant argues that a development proposal in a protected natural area should proceed because it could result in improved health for the ecosystem. Thus, an environmental "override" might act not to conclude debate but to fuel it.

The Commission is unclear how to resolve this matter other than through the wording of individual policies. Some policies contain absolute prohibitions, and at a minimum our recommendation is that such prohibitive policies will have priority over other policies. In no case are prohibitive policies to be breached. If policy statements do not fulfil intentions over time, they should be changed to achieve the desired results.

A related issue is the interpretation of the phrase "adverse effects," which occurs in a number of proposed policies. This phrase has been used in legislation and policies in Ontario and elsewhere. It has not been interpreted by the courts or administrative bodies in a manner that prohibits change. Instead, it has been interpreted to allow a degree of tolerance for change appropriate to the circumstances. Thus, while it imposes a tough test — as is appropriate in the circumstances in which the phrase is used — it does not mean "no change."

Scope of Consultations

The consultation on the policies proposed in the next section of this chapter is, as noted, consultation pursuant to section 3 of the *Planning Act*. The consultation on the draft policies will proceed in accordance with the Minister's direction as found in the letter at the end of this Report. Submissions on these proposed policies will be welcomed by the Commission until March 26, 1993.

Proposed Provincial Policy Statements

The Commission is recommending that a comprehensive set of policy statements be adopted by the province. The following are proposals for consultation purposes, as required by section 3 of the *Planning Act*. The Commission is recommending that a final version of these policies be adopted by the government under section 3 of the Act. Proposed definitions are also included and are intended to be part of the policy statements.

A. Natural Heritage and Ecosystem Protection and Restoration Policies

Goal: To protect the quality and integrity of ecosystems, including air, water, land, and biota; and, where quality and integrity have been diminished, to restore or remediate to healthy conditions.

1. Development will be permitted only if the quantity and quality of water in ground- and surface-water systems are not adversely affected in the short and long term.

2. To protect the natural heritage system, regionally significant ravines, river valleys, stream and natural corridors, woodlots, wildlife habitat, and endangered species habitat will be identified, and no development will be permitted in these areas. Development will not be permitted on adjacent and other lands if it adversely affects the integrity of the features or functions of the areas included in this statement. New utilities/facilities shall be located outside of these regionally significant features wherever possible.

3. [See Note A] In the Great Lakes – St. Lawrence Region, development shall not be permitted within provincially significant wetlands. On adjacent lands, development may be permitted only if it does not result in any of the following: loss of wetland functions; subsequent demand for future development that will have a negative impact on existing wetland functions; conflict with existing site-specific wetland management practices; and loss of contiguous wetland area. This shall be demonstrated by an environmental impact study (EIS) prepared in accordance with established procedures and carried out by a proponent addressing all these issues. On adjacent lands, established agricultural activities are permitted without an EIS.

   In the Boreal Region, development may be permitted in provincially significant wetlands and adjacent lands only if it does not result in any of the following: loss of wetland functions; subsequent demand for future development that will have a negative impact on existing wetland functions; and conflict with existing site-specific wetland management practices. This shall be demonstrated by an environmental impact study (EIS) prepared in accordance with established procedures and carried out by a proponent, addressing all these issues. On adjacent lands, established agricultural activities are permitted without an EIS.

   New utilities/facilities shall be located outside provincially significant wetlands wherever possible. Approval authorities shall consider alternative methods and measures for minimizing impacts on wetland functions when reviewing proposals to construct transportation, communications, sanitation, and other such utilities/facilities in provincially significant wetlands.

4. Locally significant ravines, river valleys, stream and natural corridors, woodlots, and wildlife habitat will be identified and classified into areas where either (a) no development is permitted or (b) development may be permitted only if it does not adversely affect the integrity of these features and functions. In the Great Lakes – St. Lawrence Region, locally significant wetlands will be identified and classified into areas where either (a) no development is permitted or (b) development may be permitted only if it does not adversely affect these wetland functions.

5. Except for areas covered in Policy 2, areas of natural and scientific interest and groundwater recharge areas will be identified and classified into areas where either (a) no development is permitted or (b) development may be permitted only if it does not adversely affect the features and functions for which the area is identified.

Note A. This statement reflects the *Wetlands Policy Statement* in a more concise form. The Minister of Municipal Affairs has advised that the government does not at this time contemplate making changes to existing policy.

6. Development on lands adjacent to lakes and water courses may be permitted only if it does not adversely affect water quality, shoreline vegetation, and wildlife habitat.

7. There shall be no net loss of fish habitat within the same water course, and development will create a net gain where possible. Development may be permitted only where mitigative measures will ensure there are no adverse effects on fish habitat.

8. [See Note B] Except with the consent of, or in special policy areas approved by, the Ministry of Natural Resources or a conservation authority, development will not be permitted in the floodway of a defined storm, or in the flood plain where the floodway is not defined. Where development is permitted in the flood fringe, structures will be permitted only if protected by flood-proofing actions appropriate to the purpose for which the structure is used, including the ingress and egress of vehicles and pedestrians during times of flooding. For the purposes of this policy, the defined storm is the Hurricane Hazel storm (1954), or the Timmins storm (1961), or the 100-year storm, whichever is greatest, in the planning area.

9. Development on lands adjacent to the Great Lakes and St. Lawrence River shoreline will be restricted within an area defined as the 100-year flood level plus a reasonable allowance for wave uprush and other related hazards. Development will also be restricted on unstable lands and on beach areas and slopes, and the restricted area will include an allowance for 100 years of erosion.

10. Hazardous sites will be identified, and development may be permitted only if it does not present a risk to public safety, public health, and property.

11. The need to remediate contaminated air, water, and soil, their systems, and contaminated sites will be determined, and an appropriate plan for site remediation will be prepared and implemented before structural building permits are issued.

12. In decisions regarding development, every opportunity will be taken to: improve the quality of air, land, water, and biota; maintain and enhance biodiversity compatible with natural systems; and protect, restore, and establish natural links and corridors.

Note B. This statement is an attempt by the Commission to summarize the *Flood Plain Planning Policy Statement*. The Minister of Municipal Affairs has advised that the government does not at this time contemplate making changes to existing policies.

B. Community Development and Infrastructure Policies

Goal: To manage growth and change to foster communities that are socially, economically, environmentally, and culturally healthy, and that make efficient use of land, new and existing infrastructure, and public services.

1. Social needs will be identified and addressed by the provision of a fair distribution of facilities and programs available to residents diverse in ability, age, income, and culture.

2. Public streets, squares, and places will be planned to meet the needs of pedestrians and designed to be safe, vibrant, and accessible to all, including the disabled.

3. The well-being of downtowns and main streets will be fostered.

4. To encourage economic opportunities that enhance job possibilities and broaden the economic base of communities, a supply of serviced and zoned land will be maintained sufficient to meet anticipated needs.

5. Communities will be planned to minimize the consumption of land, promote the efficient use of infrastructure and public services, and, where transit systems exist or may be introduced in the future, promote the use of public transit.

6. In communities served by public sewage and water systems, intensification and mixed uses will be encouraged in existing built-up areas by appropriate land-use designations and zoning.

7. Extensions to the built-up areas of communities served by public sewage and water systems will be permitted only if the following conditions are met:
   (a) new development areas are logical extensions of the existing built-up areas, and will be served by public sewage and water systems; and
   (b) provision has been made for the development, staging, and financing of the infrastructure for the extension; and
   (c) the efficient use of land, infrastructure, and public services through intensification and mixed uses in existing built-up areas has been reasonably achieved; and
   (d) the extension will have a compact form, a mix of uses, and medium densities; and
   (e) if the extension is to include quality agricultural land, it must be demonstrated there is no practical alternative to accommodating the growth reasonably anticipated in the next 10 years, and in no case may speciality crop lands be added to communities for the purpose of development.

8. Extensions to the built-up areas of communities not served by public sewage will be permitted only if the following conditions are met:
   (a) new development areas are logical extensions of the existing built-up areas, and the long-term adequacy of water supply and sewage treatment has been demonstrated; and
   (b) provision has been made for the construction, staging, and financing of any needed infrastructure and servicing systems for the extension; and
   (c) the extension will have a compact form and densities appropriate to the servicing system proposed; and

(d) if the extension is to include quality agricultural land, it must be demonstrated there is no practical alternative to accommodating the growth reasonably anticipated in the next 10 years, and in no case may speciality crop lands be added to communities for the purpose of development.

9. In non-agricultural rural and recreational areas, development that is not an extension of the built-up areas of communities may be permitted only if the following conditions are met:
   (a) rural and recreational characteristics are defined and protected in the municipal plan; and
   (b) the cumulative impacts of development on rural and recreational characteristics and on natural features and functions are assessed and are acceptable; and
   (c) the long-term adequacy of water supply and sewage treatment has been demonstrated; and
   (d) the long-term public costs of reasonably expected infrastructure and public services are assessed and are acceptable; and
   (e) large-scale development will be permitted only if it occurs in an area designated in the municipal plan for settlement and it is served by public or private communal sewage and water services; and
   (f) small-scale development will be permitted using private sewage and water systems, provided it is demonstrated that the site has the capacity to bear such services over the long term without adverse on- or off-site effects on ground- and surface water.

10. Reasonable public access to public land and water bodies will be maintained or provided.

11. Policies and decisions regarding infrastructure and development will respect and conserve significant landscapes, vistas, ridge lines, areas of natural beauty, cultural and historical patterns, built heritage, and cultural heritage resources.

12. New permanent town sites will not be permitted in areas without municipal organization, and development in areas without municipal organization will generally be restricted. New permanent town sites will not be permitted for the purposes of resource extraction.

13. Areas of known archaeological sites and areas of archaeological potential will be identified. On lands containing significant archaeological heritage, development will not be permitted where, by its nature, the resource must be preserved on site to ensure its heritage integrity. In other cases, development may be permitted if the site is studied and significant archaeological heritage is catalogued, analysed, and removed by licensed archaeologists prior to development.

14. Significant transportation and service corridors and rights of way, including abandoned railway corridors, will be identified, and the continuous linear characteristics will be protected for public purposes.

C. Housing Policies

Goal: To meet current and future regional housing needs by providing for a full range of housing types in communities diverse in ability, age, income, and culture.

1. [See Note C] A sufficient supply of land will be maintained to ensure the opportunity for the provision of a full range of housing types to meet local and regional housing needs.
   Municipalities served by public sewage and water systems will maintain at least a three-year supply of zoned land and a ten-year supply of land designated for new residential development or redevelopment.

2. [See Note C] Opportunities to provide affordable housing (that is, affordable to households having incomes up to the 60th percentile of the regional housing income distribution) should be created for at least 30 percent of new units produced through residential intensification and development. At least half of the affordable units should be affordable to the 30th income percentile, except where this figure cannot be met through innovative development and redevelopment, small-scale intensification, the use of public lands, or the use of government programs.

3. [See Note C] Existing and new neighbourhoods will be planned to include a full range of housing types, including rooming, boarding, and lodging houses and group homes, to provide accommodation for households diverse in ability, age, and income.

4. Where building stock and services are adequate, more than two units in each house may be permitted.

5. Where land owned by the provincial government is declared surplus and development for housing is proposed, the province will create the opportunity for the development of affordable housing. Smaller sites will be dedicated to not-for-profit housing; larger sites will serve a broader income range.

Note C. Includes elements of the *Land Use Planning for Housing Policy Statement*. The Minister of Municipal Affairs has advised that the government does not at this time contemplate making changes to existing policies. The Minister has also indicated an interest in receiving recommendations from the Commission on ways in which the *Land Use Planning for Housing Policy Statement* could be strengthened for affordable housing.

D. Agricultural Land Policies

Goal: To protect quality agricultural areas for long-term agricultural use.

1. Quality agricultural areas will be identified and protected for agricultural use, except for expansions to communities that meet the tests outlined in policies 7 and 8 of the proposed Community Development and Infrastructure policies. Areas of local agricultural significance may be identified and protected.

2. Lot creation in quality agricultural areas will be permitted only for agricultural uses, public purposes, or utilities, and residences built before 1978 that are surplus to farming operations as a result of farm consolidation. Public uses may not be located in quality agricultural areas unless there is no proximate alternative.

E. Conservation Policies

Goal: To pursue energy conservation, water conservation, and the reduction, reuse, and recycling of waste.

1. Patterns of land use and development will be planned and modified to best promote efficiency of energy and water use and reduce per capita consumption.

2. Water and energy conservation and waste minimization measures will be incorporated into the siting and design of landscaping, infrastructure, and buildings.

3. Patterns of land use and development will be planned and modified to reduce the need for private automobile use in daily life.

4. Transportation systems in new urban areas will be designed to give priority to energy-efficient low-polluting travel, including priority to walking, bicycling, and public transit. As opportunities arise, these transportation priorities will be reflected in existing urban areas.

F. Non-renewable Resources Policies

[See Note D]

Goal: To identify and protect existing non-renewable resource operations and significant known deposits of non-renewable resources (mineral aggregates, minerals, and petroleum resources) from incompatible uses.

1. Existing non-renewable resource operations and provincially significant known deposits of non-renewable resources will be identified and protected from incompatible uses.

2. In areas of significant non-renewable resource potential, uses will be permitted that do not preclude future access to and development of these potential resources.

3. Development may be permitted in areas of significant known deposits of non-renewable resources where extraction is not feasible; or where the proposed development serves a greater long-term interest of the general public than does access or extraction; or where it would not significantly preclude or hinder future extraction.

4. Rehabilitation of non-renewable resource lands will be required after extraction. Except where high-water conditions make it impossible, rehabilitation in quality agricultural areas will be carried out to achieve substantially the same land area and soil capability for agriculture as existed prior to extraction.

5. Development on lands adjacent to existing operations and areas of significant known deposits of non-renewable resources will be permitted, provided the development does not preclude continuation of the existing operations, does not preclude development of the remaining resource, and addresses issues of public health and safety.

Note D. Policies in this section reflect in part the *Mineral Aggregate Resources Policy Statement*. The Minister of Municipal Affairs has advised that the government does not at this time contemplate making changes to existing policies.

Definitions

Adjacent land Land contiguous to an identified natural feature or function, or resource.

Affordable Annual cost of housing, including mortgage, principal, and interest payments as amortized over 25 years with a 25 percent down payment, or gross rent, that does not exceed 30 percent of gross annual household income.

Agricultural activity Ploughing, seeding, harvesting, grazing, or animal husbandry, or buildings and structures associated with these farming activities. It includes these activities on areas lying fallow as part of a conventional rotation cycle.

Agricultural use (1) The growing of crops or raising of livestock including poultry. (2) Farm-related commercial and farm-related industrial uses that are directly related to the farm operation and are required to be in close proximity to farm operations. (3) Uses that are secondary to the farm operation, such as home occupations, home industries, and uses that produce value-added agricultural products from the farm operation.

Areas of natural and scientific interest Areas of land or water, as identified by the Ministry of Natural Resources, representing distinctive elements of Ontario's geological, ecological, or species diversity and including natural landscapes or features of value for natural heritage protection, scientific study, gene pools, and education.

Archaeological heritage The remains of any building, structure, activity, place, or cultural feature or object which, because of the passage of time, is on or below the surface of land or water, and is of significance to the understanding of the history of a people or place.

Biodiversity The variety of life in all forms, levels, and combinations. It includes ecosystem diversity, species diversity, and genetic diversity.

Biota All plant and animal life.

Boreal Region The part of Ontario defined as the Boreal Region in Figures 1 and 3 of the *Wetlands Policy Statement*. (For information purposes, the region is an area north of a line running roughly between Sault Ste. Marie and Temagami.)

Built-up area The area where development is concentrated and contiguous with the developed portions of hamlets, villages, towns, and cities.

Built heritage A building, structure, monument, or installation (or a group of them), or remains, associated with architectural, cultural, social, political, economic, or military history.

Contaminated site Property or lands that, for reasons of public health and safety, are unsafe for development as a result of past human activities, particularly those activities that have left a chemical or radioactive residue. Such sites include some industrial lands, electrical facilities, and some abandoned non-renewable resource operations.

Cumulative impact The combined effects or potential effects of one or more development activities in a specified area over a particular time period. They may occur simultaneously, sequentially, or in an interactive manner.

Cultural resource May include archaeological or built heritage resources and structural remains of historical and contextual value, as well as human-made rural, village, and urban districts, or landscapes and tree lines of historic and scenic interest.

Development (1) The construction, erection, or placing of a building or structure. (2) The making of an addition or alteration to a building or structure. (3) The change in use or in intensity of use of any building, structure, or premises. (4) Activities such as site-grading, excavation, removal of topsoil or peat, or the placing or dumping of fill.
(5) Drainage works, except for the maintenance of existing municipal and agricultural drains.

Ecosystem Systems of plants, animals, and micro-organisms, together with the non-living components of their environment and related ecological processes, essential for the functioning of the biosphere in all its diversity.

Endangered species habitat The habitat of a species identified as threatened with extinction under the *Endangered Species Act*.

Fish habitat The spawning grounds and nursery, food supply, and migration areas upon which fish rely, directly or indirectly, to live.

Flood fringe The outer portion of the flood plain between the floodway and the limit of flooding expected from the defined storm. Flood depths and velocities are generally less severe in the flood fringe than in the floodway.

Flood plain The area of land adjacent to a watercourse that may be subject to flooding during the defined storm. It includes the floodway and the flood fringe.

Floodproofing A combination of structural changes or adjustments incorporated into the basic design or construction of buildings, structures, or properties subject to flooding so as to reduce or eliminate flood damages.

Floodway The channel of a watercourse and the inner portion of the flood plain, where flood depths and velocities are generally higher than in the flood fringe. It is the area required for the safe conveyance and discharge of flood flow resulting from a storm less intense than the defined storm, or where water depths and velocities are such that they pose a potential threat to life or property on or near the flood plain.

Great Lakes – St. Lawrence Region The area of Ontario defined as the Great Lakes St. – Lawrence Region in Figures 1 and 3 of the *Wetlands Policy Statement*. (For information purposes, the region is south of a line running roughly between Sault Ste. Marie and Temagami.)

Groundwater (1) Water occurring below the soil surface that is held in the soil itself. (2) Subsurface water, or water stored in the pores, cracks, and crevices in the ground below the water table. (3) Water occurring in the zone of saturation below the earth's surface.

Groundwater recharge area An area from which there is significant addition of water to the groundwater system.

Hazardous site Property or lands that, for reasons of public health, safety, or potential property damage, are unsafe for development as a result of naturally occurring or human-made perils. They may include unstable lands or areas subject to change as a result of their previous use as mining sites, sites prone to erosion, slopes and banks, unstable soils such as some organic and clay soils, and areas of unstable bedrock.

Infrastructure Physical structures that form the foundation for development. Infrastructure includes public sewage and water systems, storm-water disposal systems, waste management facilities, electric power, communications and transportation corridors and facilities, oil and gas pipelines, and other facilities such as schools and hospitals.

Intensification The development of a property or site at a higher density than previously existed. It includes (1) redevelopment, or development within existing communities where demolition of the previous structures is to take place or has taken place; (2) infill development, or development on vacant lots or underdeveloped lots within a built-up area; (3) conversion, or the change of use of an existing structure or land use, such as from industrial to residential; (4) creation of apartments or rooming, boarding, and lodging accommodation in houses.

Mineral aggregate Sand, gravel, shale, limestone, dolostone, sandstone, and other mineral materials suitable for construction, industrial, manufacturing, and maintenance purposes, but excluding metallic minerals, fossil fuels, and non-aggregate industrial minerals such as asbestos, gypsum, nepheline syenite, peat, and rock salt.

Minerals:

Industrial minerals are generally synonymous with non-metallic minerals and include any mineral, rock, or other naturally occurring substance of present or potential economic value, exclusive of metallic ores, mineral aggregates, and mineral fuels.

Metallic minerals have a high specific gravity and a metallic lustre from which metals (such as copper, nickel, or gold) are derived.

Non-metallic minerals lack the common properties of metallic minerals, such as metallic lustre or high specific gravity, and are generally of value for intrinsic properties of the mineral itself and not as a source of metal. They are generally synonymous with non-aggregate industrial minerals such as asbestos, gypsum, nepheline syenite, peat, and rock salt.

Mixed use A variety of uses in a building or community in close proximity, possibly including housing, recreational, and commercial, institutional, industrial, or other employment uses.

Natural heritage system A connected group of natural areas, and the native flora, fauna, and related geological features and landforms that contribute to the health and biodiversity of the natural environment. Natural heritage systems may include natural core areas (such as areas of natural and scientific interest, wetlands, or wildlife habitat), natural corridors (such as rivers, streams, lakeshores, or ravines), and natural connecting links (such as hedgerows, tree lines, or restored road or rail allowances) that connect natural core and corridor areas.

Non-renewable resource operations (1) Legally existing pits and quarries, oil, gas, and brine wells, and mining operations, including associated production and processing facilities. (2) Areas of existing mining land dispositions (mining leases and patents). (3) Past-producing mines, pits, and quarries with remaining mineral development potential.

Petroleum resources Included are oil and gas deposits, brine wells, and underground natural gas storage facilities.

Provincially significant wetland (1) A Class 1, 2, or 3 wetland in that part of the Great Lakes – St. Lawrence Region below the line approximating the south edge of the Canadian Shield, as defined in *An Evaluation System for Wetlands of Ontario South of the Precambrian Shield* (MNR, 1984). (2) A wetland identified as provincially significant by the Ministry of Natural Resources through an evaluation system developed specifically for other areas of Ontario.

Public services Programs and services provided or subsidized by a government or other public body and not otherwise included as infrastructure. Examples include social assistance, health, and education programs, cultural services, and maintenance of facilities.

Public sewage and water system A system for the supply, collection, distribution, or treatment of water or sewage, including domestic waste water and storm water, owned or operated by the province, a municipality, or another public body.

Quality agricultural area An area where quality agricultural land predominates.

Quality agricultural land Land that includes specialty crop lands and/or Canada Land Inventory Classes 1, 2, and 3 agricultural capability soils. Quality agricultural land may also be identified through an alternative land-evaluation system approved by the Ministry of Agriculture and Food.

Rehabilitate After extraction, to treat land so that the use or condition of the land is restored to its former use or condition, or is changed to another use or condition that is or will be compatible with adjacent land uses.

Rural and recreational characteristics Elements of a municipality's physical, environmental, social, or cultural fabric through which its identity or uniqueness has evolved and is defined. Examples include historic settlement patterns, natural or cultural resources, waterways, and distinctive landscapes or vistas.

Sewage and water systems:

Full public systems are piped sewer and water services, owned by the municipality or the province and provided to serve the whole municipality or a substantial part of it.

Public communal systems are sewage or waterworks that provide for the distribution, collection, or treatment of sewage or water not connected to full public systems; are for the common use of more than five units of full-time or seasonal residential occupancy; and are owned, operated, and managed by the municipality or other public body.*

Private communal systems are sewage or waterworks that provide for the distribution, collection, or treatment of sewage or water not connected to full public systems; are for the common use of more than five units of full-time or seasonal residential occupancy; and are owned, operated, and managed privately.*

Private sewage and waterworks or systems, including on-site systems, are owned, operated, and managed privately and used by five or fewer properties or units.*

Significant Important to the natural environment in terms of amount, content, representation, or effect. Natural features and functions, including ravines, river valleys, stream and natural corridors, woodlots and wildlife habitat, may be **regionally significant**, in which case they are ecologically important and contribute to the quality and integrity of an identifiable ecological region within the province. If **locally significant**, the natural features and functions are ecologically important in a local ecosystem context.

Transportation system Public corridors, transit systems, roads, pathways, and other facilities for the movement of people or goods. Modes of transportation in these systems may include automobile, bus, train, aircraft, bicycle, or foot.

Unorganized areas Those parts of the province without municipal organization.

Wave uprush The movement of water onto a beach, bluff, or structure following the breaking of a wave. The limit of uprush is the point of farthest water movement.

Wetland area A single contiguous wetland, which may be composed of one or more wetland types. Two or more wetland areas, plus their adjacent lands, form a wetland complex.

Wetland functions The biological, physical, and socio-economic interactions that occur because wetlands are present. Included are groundwater recharge and discharge, flood damage reduction, shoreline stabilization, sediment trapping, nutrient retention and removal, food-chain support, and fish and wildlife habitat.

Wetland management practices The activities undertaken by municipal or provincial public bodies, or by private landowners or individuals, to modify or enhance wetland features or functions to meet specific objectives

Wetlands Lands seasonally or permanently covered by shallow water, as well as lands where the water table is close to or at the surface. In either case, the presence of water has caused the formation of hydric soils and has favoured the dominance of hydrophytic, or water-tolerant, plants. The four types of wetlands found in Ontario are bogs, fens, marshes, and swamps.

Wildlife habitat Areas of the natural environment upon which wildlife depend for survival as self-sustaining populations in the wild, including land and water needed for cover, protection, or food supply. Wildlife include all wild mammals, birds, reptiles, amphibians, fishes, and invertebrates. Areas included may be deer yards, nesting areas, aquatic habitat, waterfowl staging areas, and areas identified as habitat for rare or threatened species.

Woodlot A hardwood, softwood, or mixed wooded area of more than one hectare, covered in trees to a density of (1) at least 1000 trees per hectare of all sizes, or (2) 750 trees per hectare measuring over 5 centimetres in diameter or, (3) 500 trees per hectare measuring over 12 centimetres in diameter, or (4) 250 trees per hectare measuring over 20 centimetres in diameter.

* Defining a communal system as five units is consistent with Ministry of the Environment Guidelines. ("The Responsibility for Communal Water and Sewage Works and Communal Sewage Systems"; "Planning for Sewage and Water Services.")

6
The Provincial Role

The province has an important role to play articulating provincial policy and formulating provincial plans. The province must also play a strong role in: providing information, undertaking research, advising municipalities, reviewing municipal plans and significant development applications, protecting resources and the natural environment, and dealing with matters of equity, fairness, and due process.

This chapter suggests how the province should carry out these responsibilities.

Provincial Policy

The importance of clearly stated policy cannot be overemphasized. It provides a context for provincial decisions that affect land and the physical environment and defines the framework within which municipal planning can occur.

Since provincial policies are expressions of provincial expectations, the *Planning Act* should give them sufficient force to ensure that actions taken by decision-makers at the provincial or municipal level, or by agencies, commissions, or authorities appointed by these governments, are consistent.

As noted in Chapter 5, the *Planning Act* states that decision-makers "shall have regard to" policy statements adopted under the Act (section 3(5)). Interpretations of this phrase by the courts have created uncertainty about its strength. Accordingly, the phrase should be changed to remove any doubt about the status of decisions in regard to policies. The Commission recommends that the Act be amended to state that actions taken by any planning authority or decision-maker shall "be consistent with" policies adopted under it. The *Planning Act* should also set out requirements that municipal plans address matters set out in provincial policy, as noted in Chapter 8.

A good policy-making process is fair, open, accessible, accountable, coordinated, and effective. Ensuring these characteristics are met in practice at the provincial level is a challenge.

Generally, the process for formulating policy should be as follows:

1. Provide notice of intent to formulate a policy about a particular subject, including the suggested timetable for decision-making and the process to be followed.
2. Provide opportunity for early comment.
3. Where appropriate, create a small working committee or committees to help produce draft studies and a draft policy.
4. Publish a draft document and background studies addressing options and alternatives.
5. Provide opportunities for public review, including, where appropriate, public meetings.
6. Make a recommendation to Cabinet for decision.

Where there already has been considerable public discussion about an issue, not all these steps need be followed. The keys are: input into document preparation, document circulation, and fair opportunity for comment. This framework should be set out in legislation.

Provincial Planning

Provincial planning will help the government make informed decisions about where to spend limited funds, how to protect large-scale natural features, and the location and extent of needed infrastructure. Plans are as necessary — and as desirable — at the provincial level as at the municipal level.

Two types of planning should be done at the provincial level. The first is strategic planning, which is higher-order planning. It sets priorities and direction on a general level and touches on larger economic, environmental, and social issues. Provincial strategic planning differs from municipal strategic planning only in scale. Provincial strategic planning could apply provincewide or to large areas of the province, and it should be more concerned with questions within provincial jurisdiction than those lying within municipal authority.

The second type of provincial planning, area planning, is geographically based. Area plans touch on specific issues that cross municipal boundaries. (Many of these issues prove too complex for several municipalities to deal with on a joint basis.) They could also address issues that require consistent application of policies across municipal boundaries and provincial capital expenditures for infrastructure, such as transportation, sewage, and water. The planning process should include a review of alternatives, an outline of the specific choices that seem available, and then a recommended course of action. This process should be carried out with municipalities.

Provincial plans could be implemented in a number of ways. The *Ontario Planning and Development Act* provides one mechanism for provincial planning, but its cumbersome procedures have discouraged its use. Provincial plans could also be implemented through specific legislation, of which the *Niagara Escarpment Planning and Development Act* is an example. The Commission is not making recommendations regarding this legislation.

Provincial strategic and area plans should also be clearly authorized and legitimized in the *Planning Act*. A simple and easy way to implement them would be as provincial policy statements under the *Planning Act*. Such statements would provide clear direction for municipal plans. Maps could be included in the statements, with the precise boundary lines of designated areas implemented through municipal plans and zoning by-laws. The *Planning Act* should be amended to clearly authorize this approach.

Mechanics of Policy-making and Planning

Provincial policy-making and planning functions have not been effectively carried out in the past, and a new mechanism is needed. The Commission has three recommendations: the establishment of a Provincial Planning Advisory Committee; the formation of an Interministerial Planning Committee; and assignment to a new Ministry of Municipal Affairs and Planning of the lead role in policy-making and planning at the provincial level. It is expected that the staff and modest funds required for these three proposals will be secured through the reallocation of existing resources.

Provincial Planning Advisory Committee (PPAC)

A Provincial Planning Advisory Committee should be appointed by the Minister of Municipal Affairs and Planning. It should consist of 15 to 20 members representing the diverse interests in the planning system, such as the development industry, environmental groups, municipalities, farming groups, community groups, and planners. It should be an ongoing committee, meeting monthly, with members appointed for limited terms. The chair should be appointed by the Minister.

Interministerial Planning Committee (IPC)

An Interministerial Planning Committee should consist of deputy ministers from ministries that have a direct interest in land-use planning in Ontario: Municipal Affairs and Planning, Environment, Natural Resources, Housing, Agriculture and Food, Transportation, and Treasury. The deputies of other ministries with an interest in planning — Culture and Communications, Education, Northern Development and Mines, and Tourism and Recreation, for example — should be involved as necessary and appropriate. (A large committee of all ministries with an interest in planning matters would be unwieldy and ineffective.) Since the Ministry of Municipal Affairs and Planning is being recommended to coordinate the province's planning activities, the committee should be chaired by the deputy minister of Municipal Affairs and Planning.

Ministry of Municipal Affairs and Planning (MAP)

Lead responsibility for policy-making and planning at the provincial level should be assigned to one ministry. Other ministries will continue to consider policies and plans of specific interest to their functions, but responsibility for provincial planning initiatives, coordination, and response should be focused in one ministry rather than diffused among many. Given current functions, it seems reasonable to assign this responsibility to the Ministry of Municipal Affairs, to be renamed Municipal Affairs and Planning. Some restructuring of the Ministry may be required to accommodate new responsibilities and priorities.

Responsibilities

The prime responsibilities of the Provincial Planning Advisory Committee would be to:

1. Review requests for policy and planning proposals from the Minister, the public, and other interested parties.
2. Recommend to the Minister, for approval, an annual agenda of policy and planning priorities for the committee.
3. Direct the preparation of background studies, direct assigned staff, and retain consultants as needed.
4. Direct public consultation on policy and planning matters.
5. Review the results of the public consultation, and provide feedback to the public on the recommendations made and how public input was considered.
6. Make recommendations to the Minister for provincial policies and plans, providing supporting rationale.

PPAC should be authorized to establish special committees representing interests in particular areas to consider plans relevant to specific parts of the province. This authorization would ensure the best possible input for the drafting of proposals in such areas. PPAC may also wish to use special committees with diverse interests and expertise in particular policy issues. These committees would be struck with the consent of the Minister.

PPAC and any committees it helps establish should operate in a public fashion. Wide consultation should be held, with reports and background studies made readily available.

The prime responsibilities of the Interministerial Planning Committee would be to:

1. Coordinate policy and planning activities among ministries.
2. Arrange for appropriate staff resources and information to support the policy and planning formulation process of PPAC.
3. Work with PPAC in preparing proposed policies and plans.
4. Advise the Minister of Municipal Affairs and Planning and other ministers on policy and planning activities.

Regular liaison between PPAC and the IPC will be important to ensure that the interests and expertise of both are fully utilized. Close cooperation will not be guaranteed by a structural relationship, but will depend on the goodwill of members of both committees. Some liaison will be assured if two members of the IPC are assigned to sit on PPAC. Further, the committees should hold joint sessions to work out any problems and approaches.

Both committees should be supported by staff from the Ministry of Municipal Affairs and Planning and, as appropriate, from other ministries. PPAC should have its own administrative staff and a budget to cover staffing and other operational costs. Government review of the work agenda will occur as the annual budget of PPAC is processed.

The prime responsibilities of the Ministry of Municipal Affairs and Planning would be to:

1. Administer legislation for land-use planning and related matters.
2. Coordinate provincial activities regarding policies and planning for land-use and related matters, including studies, analysis, and monitoring.
3. Resolve interministerial issues regarding these matters.
4. Work with PPAC.

There should be an opportunity for the public to make requests to the Minister on suggestions for new or revised policy and plan.

It is expected that ministries will continue to plan internally for matters for which they are responsible. As the lead ministry for planning, MAP will be expected to coordinate such planning once it is proposed as possible government policy.

The Province as Advisor

Ministries should be prepared to advise municipalities on translating provincial policy into municipal plans, handling difficult development matters, judging the adequacy of technical studies, and related matters. These functions will be critical to good planning at a local level. As part of this advisory role, the province should review proposed municipal plans. In fact, it should give greater attention to them at the proposal stage than after they have been approved. The province should also prepare advisory implementation guidelines for provincial policies. To fulfil these functions, provincial ministries should coordinate their activities at the regional level.

The model the Commission is recommending proposes that over time the provincial approval role will be substantially reduced. One fear is that without a requirement for provincial approvals, ministries will have no interest in reviewing municipal planning decisions, and they may play no active role in ensuring consistency between municipal decisions and provincial policies. It has been suggested there be a legislated requirement for ministries to comment, but this would be approval by another name, and the quality of comment would not be assured.

Under the proposed system, one responsibility of ministries is to be involved at the plan-preparation stage and review significant development applications and technical studies. Further, ministries will continue to exercise the permit and licensing function. Another responsibility is to uphold policy. With clear statements of provincial policy, there will be strong political pressures to ensure these mandates are adhered to.

The Province as Information Provider

The province should collect, interpret, and publish various kinds of useful information. (Satellite mapping and well-water data are two of many examples.) The province should provide information to municipalities to assist them in preparing policies and maps required by provincial policies and the *Planning Act*. It should monitor environmental and other indicators, both to ensure its own goals are being met and to help municipalities. This last task could require a coordinated information system.

The province should be responsible for developing a research agenda to find solutions for existing problems, as it formerly was for septic-system and other problems. In this way, scarce resources could be put to good use to address general municipal problems, be they with sewage, waste, development control, or water and energy conservation.

Minister's Powers

The *Planning Act* gives the Minister of Municipal Affairs extensive powers, reflecting the current role of the province in planning approvals. If the changes recommended in this draft Report are made and most planning approvals are assigned to municipalities, those powers would be substantially reduced.

The Commission is recommending that the Minister of Municipal Affairs and Planning be given lead responsibility for planning functions in the province. The Minister will need ways in which to exercise this responsibility. The Minister should receive notice of most municipal planning matters and, apart from arrangements suggested for the transition period, be given the following powers in the *Planning Act*.

Appeals

The Minister, as well as other ministers, should be permitted to appeal any municipal planning decision within the same timeframe, and subject to the same rules, as other objectors.

Emergency Powers

In cases of emergencies, the Minister should have the power to impose an interim holding order in any case and on any site or area where there is a provincial interest that is not addressed by provincial policy, and where that interest will not be protected unless the Minister intervenes. The interim holding order should be effective for a period of up to one year and renewable for no more than one further year. The purpose of the order would be to allow time for the creation and enactment of an appropriate provincial policy. It would expire with adoption of policy. This power is parallel to the interim holding by-law provisions now available to a municipality.

Zoning Controls

The Minister should have the ability to place a zoning order on any site or area without local zoning controls where there is a provincial interest that will not otherwise be protected.

Withdrawal of Approval Authority

It is possible that planning in an area may break down and become ineffective. In such cases, the Minister should be allowed to remove plan approval and lot-creation authority from the municipality or planning board. This extraordinary intervention should be permitted only when there has been a series of local decisions indicating that approvals given are not consistent with provincial policies under section 3 of the *Planning Act* or do not conform to the municipal plan, or where reasonable planning administration is no longer in place to process applications. The Minister should set out the conditions under which the municipality or board would regain approval powers. These powers would be returned to the municipality or board when the Minister believes a reasonable local administration has been established and is confident in the ability of the local administration to make decisions consistent with provincial policy.

In each case where the Minister exercises powers described above, the intervention should be accompanied by a statement of the reasons for action and a statement of how the preconditions for the legislation have been met.

The authority of the Minister to issue declarations of provincial interest which provide that OMB decisions are not final and binding but may be confirmed, varied, or rescinded — as set out in sections 17, 22, and 34 of the *Planning Act* — should be repealed.

Permits and Licences

The province will address its interests in planning mainly through provincial policy statements, but it will still be involved in some development decisions. There are legitimate provincial interests in such matters as access points to provincial highways and technical requirements for sewage facilities, soil contamination, water quality, and the like. These interests are protected through legislation and regulations and are implemented through permits and licences.

Permits and licences are granted at the end of the planning process. If, however, that process is to be meaningful, it is important that any fundamental requirements for permits and licences be built into municipal plans. For example, availability of water on a property should be considered when the land is being designated for development, not left to the time when a water-taking permit is being considered.

There are two other concerns about provincial permits and licences. First, it is important that the requirements for securing a permit or licence are well known, and that those requirements do not change without notice and public discussion. Second, decisions on the issuance of permits and licences should be made expeditiously.

Both concerns are now being addressed at the provincial level. One of the responsibilities of Dale Martin, the provincial facilitator appointed in April 1992, is to help expedite provincial approvals of permits and licences for projects that have received planning approval. Mr. Martin has recommended several procedural changes among ministries. As well, the draft Environmental Bill of Rights addresses questions of certainty, notice, and public input into environmental policy, regulations, and instruments. The Commission is supportive of both initiatives.

Several people have noted that a comprehensive manual of provincial permits and licences would be helpful. The Greater Toronto Home Builders' Association has published a useful guide to provincial approvals (fall 1992), and the Commission has compiled a list of provincial permits and licences. The Ministry of Municipal Affairs and Planning should consider publication of a booklet on required provincial permits and licences.

Development Standards

Development standards are the detailed municipal requirements that developers must follow as they implement specific projects. They are of provincial interest for two reasons. First, they can have a substantial impact on the form of development and on the natural environment, and thus are related to the implementation of provincial policies. Second, the extra costs incurred if standards are higher than necessary can be significant across the province.

Some standards can accent and augment sprawl and discourage reasonable compactness. Some can require expenditures for what many call "gold-plated standards," which result in higher housing prices. And in some cases, the developer has no reasonable recourse to fight an unreasonable standard imposed late in the development process.

The province should focus attention on such questions as: what risk should the standard be designed to bear? how uncommon an occurrence should the standard be expected to meet? should local stormwater systems be built to handle the worst storm expected over 10 years or 25 years? should cul-de-sacs be wide enough to accommodate an aerial fire truck for turnarounds?

While the province should not set development standards to which municipalities must adhere, it should advise municipalities and the development industry of standards it considers reasonable, recognizing that conditions vary across the province. What works in Metro Toronto may not work in North Bay or Bayfield.

Principles

Development standards should be based on the following general principles:

- The standards should be in conformity with provincial and municipal goals and policies and, in particular, should respect and protect significant natural and cultural features.
- Standards that rely on natural processes to resolve potential problems are preferred over technical intervention.
- Standards should contemplate and encourage compact development and make efficient use of land.
- Standards based on recreational and social- and health-service levels should take into account changing demographic patterns, actual use, and changing social values.
- Acceptable standards should minimize construction, maintenance, and replacement costs.

Establishing a Committee

A Development Standards Committee should be established by the Minister of Municipal Affairs and Planning to propose a set of development standards that could serve as a municipal guide. The committee should have broad representation from groups and organizations such as the Association of Municipalities of Ontario, the Urban Development Institute, the Municipal Engineers Association, environmentalists, residents, architects, homebuilders, planners (public and private), and ministries. The committee should consist of no more than 20 people, with the chair appointed by the Minister.

By following the general approach about public participation that applies to other decision-making bodies, the committee will have the advantage of getting as much public input as possible. The small staff resources required should be made available through the Interministerial Planning Committee. The Development Standards Committee should be asked to report within one year of being established.

Issues

The committee should address the most frequently discussed issues. In some cases, it may be wise to have a range of standards that reflect geography, climate, and types of development across the province.

Road and sidewalk: width of right of way; width of pavement; radius of cul-de-sac; width of boulevard; residential curb type; sidewalk width and whether on both sides of the road.

Infrastructure: storm-sewer requirements; storm-surface drainage; necessity of stormwater treatment; manhole spacing; sewer diameter; roof drainage requirements; foundation drain requirements; sanitary and storm-sewer connections; water-main connections; trenching requirements; street lighting.

Building: setback; minimum building frontage; minimum lot size; surface-parking arrangements; parking space size and ratios; separation distances between uses; provision for manufactured homes; minimum residential unit size.

Parks and recreation: plantings, parks, and open space; recreational facilities; fencing.

Grants and Subsidies

The province has been involved in two kinds of grant programs to assist local planning: community planning grants, and planning administration grants for Northern Ontario. The total amount anticipated to be granted in the current fiscal year under these programs is slightly less than $1.35 million.

The Community Planning Grant Program was established in 1975 to help municipalities of less than 15,000 produce planning documents and develop local planning administration. The population limit has since been removed.

About $20.4 million was distributed between 1975 and 1989 to more than 500 municipalities and planning boards. The Ministry of Housing contributed $850,000 in 1989/90 and 1990/91 to the Community Planning Grant Program to help fund municipal housing statements. In 1991/92, a total of $1 million was spent. A Cabinet moratorium has been declared on this program, and spending in the current fiscal year will be held to $1,011,000 to fulfil commitments already made. No decision has been made on the future of the program.

Planning Administration Grants have been provided to planning boards in Northern Ontario to assist with land-use planning in unorganized territories. This program started in 1977, and its annual budget has ranged from $250,000 to $485,000. All planning boards incorporating unorganized territory are eligible for grants. Grants are based on a complicated formula of number of households, size of the unorganized area, and powers given to the board. The budget for the current fiscal year is $325,000, spread among the 18 eligible planning boards.

Special grants from different ministries are sometimes made available for special projects, such as the grant toward the Halton Region Urban Structure Review. (The amount and scope of these special grants are not included in any calculations here.)

There is no specific program under which watershed or subwatershed plans are funded. However, grants by the Ministry of Natural Resources totalled $1.2 million in 1992 and funded 21 watershed planning projects at a 50 percent subsidy rate.

Provincial planning grants, although not representing a lot of money, have been effective in helping municipalities develop planning documents and implement provincial policies.

Cost of Planning

The total spent by municipalities for all planning activities and administration in 1991 was $173 million, which in the scheme of things is not a large figure.

Planning, after all, is the method by which we attempt to design the communities in which we will live. Architects fill a comparable role when they think about how a building might be built and advise on options. Architects may charge up to 10 percent of the cost of construction — and most people think that is money well spent.

Using that analogy for planning, we should consider how planning expenditures relate to expenditures on public and private construction works.

The data from several cities indicate that planning expenditures vary from 2 to 7 percent of municipal capital expenditures, and from 0.2 to 0.5 percent of the value of building permits issued. In neither case could one say this level of expenditure is extravagant.

It costs less to plan well than to pay for the costs of not planning. "Not planning" means that decisions made today without forethought and analysis may, in a few years' time, create problems that prove extremely expensive — such as providing water and sewage services when septics have failed, restoring a river or stream that has been polluted, or subsidizing public transit.

The processes being recommended by the Commission, including public involvement, are directed at ensuring that planning studies themselves are done efficiently. Like everything else, good planning has far less to do with the number of dollars thrown at the process than with the commitment of the participants to find good answers to problems.

Provincial Grant Program

The provincial government should have a reasonable planning grant program which focuses on provincial priorities and supplies money that, although limited, can make a difference for planning at the municipal level. Such a program should have three priorities.

Many counties do not have county plans, and the highest priority should be support for the production of a first municipal plan at the county level. Grants should not exceed half the cost of any particular study, since it is important that the plan belong to the county. Provincial funding should help in the prompt creation of these plans. (It should be noted that counties with plans have already received grants from the province.) A total annual allocation of $1 million should be considered for such grants.

The second priority should be grants to planning boards in Northern Ontario for developing first plans and for support of ongoing administration in the unorganized areas within planning boards. There should be no net loss of funding to planning activities in Northern Ontario. An annual allocation of $600,000 is suggested.

The third priority for provincial financial support should be watershed planning. Support should be directed toward watershed and sub-watershed studies where development pressures are greatest, or where natural indicators show serious change is occurring and should be addressed. The total annual allocation suggested for watershed studies is $1.5 million.

Consideration should also be given to financial support for strategic planning and joint planning.

Subsidies

Provincial subsidies and grants should support and be consistent with provincial policy statements made under section 3 of the *Planning Act*. This point is not new. The Ontario Round Table on Environment and Economy, for example, recommended in its September 1992 report that all provincial subsidies and grants be reviewed to ensure that financial programs do not encourage urban sprawl.

Making subsidy and grant programs consistent with policies is not an easy task. Programs have been in place for many years, they often have several worthwhile (if competing) purposes, and they are lodged deep within ministries. The amounts involved in "inconsistent" programs are difficult to estimate. For instance, are subsidies to transit authorities in low-density communities to be considered a crutch to the low-density community or a necessary support for transit usage? And to what extent does the property tax system affect development forms? Responses to such questions may involve eliminating inconsistent programs or reviewing the conditions under which subsidies and grants are made.

The Interministerial Planning Committee should be given the task of reviewing programs for consistency. It should be asked to report regularly to the Minister of Municipal Affairs and Planning on progress made on the review, with a final reporting date of not later than a year after adoption of a comprehensive set of provincial planning policies.

Monitoring

It is important that any planning changes be reviewed at regular intervals, to ensure goals and policies are being met. The Ministry of Municipal Affairs and Planning should institute a regular monitoring program of the effectiveness of provincial policies.

7
Planning and Aboriginal Communities

There are 126 First Nations and 197 reserves in Ontario, as well as many other Aboriginal communities.* One-third of the province's Aboriginal communities are located in Southern Ontario, two-thirds in Northern Ontario. There are 72 outstanding land claims filed by Aboriginal communities, applying to both Crown and private lands in the province.

Many Aboriginal communities are adjacent to or close to municipalities. Given this proximity, municipalities and Aboriginal communities may have interests in shared natural features such as a water body or wetland, or they may share infrastructure such as roads or water supplies. They may also wish to cooperate on planning for economic development and employment opportunities.

* In this chapter, the term "Aboriginal community" includes First Nations, Aboriginal, and Métis interests.

Land-use and development problems can arise as a result of circumstances such as the following:

- Development in municipalities or planning areas that affects reserve lands or lands owned or occupied by Aboriginals, or vice-versa; for example, a pit or quarry, landfill, or residential or industrial development.
- In a municipality, development proposals on lands owned by an Aboriginal community that do not conform to the municipal plan or zoning by-law.
- Absence of coordinated planning or of agreement for the development and maintenance of shared infrastructure such as boundary roads, water, and sewer facilities.
- Development that adversely affects shared natural features such as a water body or wetland.
- In a municipality, development on lands in which Aboriginals have an interest, such as a burial site or other sacred place.
- In a municipality or planning area, planning and development on lands on which there is a formal claim by Aboriginals, or that are considered to be traditional lands.

A good planning process should help resolve these kinds of issues in a mutually satisfactory way. Consultation, and in some cases joint planning, will be needed, along with the authority to act on the understanding or the plans that result.

One example of consultation and a joint-planning process is contained in the interim measures agreement between the province and the Nishnawbe-Aski Nation (NAN) in Northern Ontario. This agreement requires notification to First Nations of government policies and proposals. Conflicts

are reviewed by a tripartite interim measures group and recommendations are made to the federal, provincial, and NAN governments. A limited number of provincial First Nations interim planning boards have also been established, such as the Windigo and Shibogama boards. They deal primarily with northern First Nations and planning on Crown land, which are not covered in the *Planning Act*. Although notification and consultation are part of these initiatives, there is no general provincial policy or requirement to notify Aboriginal communities of the development or sale of publicly owned land.

Some municipalities and First Nations — for example, North Bay and Nipissing First Nation — have used agreements to address their common concerns. But such examples are rare. In general, there appears to be little communication between municipalities and Aboriginal communities regarding land-use policies and development proposals. Where it exists, it happens informally and most often between staff, rather than between governing bodies.

Requirements for notification in the *Planning Act* make no specific reference to Aboriginal communities. For minor changes such as rezonings, municipalities must notify land owners within 120 metres of the site of the change for which the application is made. If Aboriginal lands fall within this distance requirement, notice is sent. Notice of more significant planning actions must be sent to local, provincial, and federal agencies and to municipalities within one kilometre, as well as to agencies, but Aboriginal communities are not included in this list.

When a municipal plan has been sent to the province for approval, Aboriginal communities may be notified of municipal policies and development proposals if provincial officials determine reserve lands will be "directly impacted"; federal and provincial agencies are notified if it is expected they may have "an interest." No comparable notification procedures exist at the municipal level.

There appears to be little communication from Aboriginal communities to municipalities in regard to land-use changes on reserve lands or lands owned by Aboriginal communities within a municipality. These lands are considered to be "federal" and therefore outside the jurisdiction of municipal policies and by-laws. There is at least one pending Ontario Municipal Board appeal by a municipality on this issue.

For their part, municipalities generally consider land claims to be a federal, provincial, and Aboriginal concern and do not account for claims in their planning activities. Aboriginal communities often fear municipal approval of development activity may adversely affect their claims. Fostering an understanding about the benefits of development without prejudicing land claims would benefit municipalities and, perhaps, Aboriginal communities.

The current *Planning Act* does not address the resolution of local, provincial, and Aboriginal community-planning and development concerns. No formal mechanisms exist that would allow municipalities and Aboriginal communities to plan for shared infrastructure or resolve concerns about the impact of development.

As the shape and scope of Aboriginal self-government continue to evolve, the *Planning Act* should provide opportunities for municipalities to work together with Aboriginal communities in addressing planning and development questions.

The following suggestions may provide such opportunities for municipalities and Aboriginal communities. They should be considered as interim steps as Aboriginal self-government unfolds, without limiting opportunities for other solutions to be discussed or established.

1. As an order of government, Aboriginal communities should be included whenever there is a specific requirement in the *Planning Act* to notify an adjacent owner or municipality, or a provincial or federal agency. There may be other situations in which notification is required, such as in proposals for land on which an Aboriginal claim has been filed. Conditions for notification in such situations might best be worked out between Aboriginal communities and municipalities or planning boards.
2. Municipalities and planning boards should be specifically authorized by the *Planning Act* to enter into agreements with Aboriginal communities regarding development, servicing, and other matters. This authorization should explicitly note that outstanding land claims are not prejudiced because of such agreements.
3. A protocol or agreement should be developed at the provincial level so that notice of development proposals or changes in use or tenure of provincially owned lands would be given to Aboriginal communities.
4. Where planning board jurisdictions are adjacent to Aboriginal communities or lands, or where they include lands on which there is a land claim, the *Planning Act* should provide the opportunity for Aboriginal representation on the board, subject to an agreement between the board and the Aboriginal community.

How the *Planning Act* might deal with Aboriginal concerns off-reserve — such as in the cities where many Aboriginal people live — is an unanswered question.

Issues of notification by Aboriginal communities to municipalities or the province cannot be addressed because the *Planning Act* does not apply to Aboriginal communities. Notification could be established by agreement between Aboriginal communities and the province or between Aboriginal communities and a municipality.

Issues of land claims cannot be addressed under the *Planning Act*, and it is doubtful that development of land owned by Aboriginals held off-reserve falls within municipal planning jurisdiction. It is not clear how to respond to these concerns. Negotiation and agreements between municipalities and Aboriginal communities seem to be the best way of proceeding right now.

8
The Municipal Role

Municipalities play a very important role in achieving good planning. This chapter describes proposals to address the many aspects of municipal planning: structures; plan-making; implementation; and public involvement — and the details that each entails. The proposals are made in an attempt to respect Ontario's diversity and the wide differences in practice found throughout the province, and with a recognition that the Commission's mandate does not extend to municipal restructuring.

Structures

Ontario has 831 municipalities. Two tiers of government cover most of Southern Ontario. At the upper tier are 27 counties and 11 regions; at the lower tier are numerous towns, townships, villages, and some cities. In addition, 21 separated cities and towns and one separated township are located geographically in 16 counties but outside the county political structure.

Two-thirds of counties do not have official plans; neither do two of the province's fastest growing regions, York and Peel. Some 80 percent of lower-tier municipalities have a population of less than 5000, and consequently have limited resources to undertake planning.

In Northern Ontario, half of the 800,000 residents live in five cities and the Regional Municipality of Sudbury; most of the rest live in 180 small municipalities, the majority of which have less than 5000 residents. Some 50,000 people live in areas without municipal organization. There are more than one hundred Aboriginal communities in Northern Ontario.* Twenty-two planning boards cover some municipalities and unorganized areas.

Upper-Tier and Lower-Tier Planning**

The management of change at the municipal level requires that planning for broad issues, such as the protection of the natural environment and resources and the provision of infrastructure needed to support growth and change, be addressed. As well, details within these broad issues should be addressed.

The upper-tier government — that is, the county or the region — is the place to plan for the broad issues. Counties and regions are physically large enough to plan for natural features and functions and provide the perspective needed to address infrastructure questions

* The term "Aboriginal community" is used to include First Nations, Aboriginal, and Métis interests.

** The term "upper-tier municipality" means any county, or a regional, metropolitan, or district municipality. For discussion purposes, the roles and requirements of upper-tier municipalities noted here also apply to separated municipalities, cities in the North, and planning boards. A "lower-tier municipality" is any city, town, village, or township within a county or a regional, metropolitan, or district municipality, that has representation on its respective upper-tier council.

and settlement patterns. They are able to address general questions of economic growth in larger areas, rather than just in specific locales.

Good planning requires skilled practitioners and an appropriate administrative support structure. Counties and regions permit the pooling of necessary resources.

To facilitate good planning, there must be a clear and reasonable distribution of planning responsibilities. The Commission recommends the *Planning Act* be amended to provide that:

- upper tiers must develop a plan;
- lower tiers may develop detailed plans for the municipality or for one or more neighbourhoods, districts, or areas in the municipality;
- lower-tier plans must conform to upper-tier plans;
- upper tiers should be responsible for lot creation and plans of condominium, although delegation to lower tiers could occur in some limited situations;
- lower tiers should be responsible for the details of zoning, site-plan control, and minor variances, except where they decide to transfer these matters to the upper tier.

The broad plans required of upper-tier municipalities must:

- interpret provincial goals and policies into a regional context;
- plan and coordinate regional infrastructure, including transportation, water, and sewage treatment;
- establish urban and rural boundaries and settlement patterns;
- address the general nature and distribution of employment and housing across the region;
- address regional social issues, other regional responsibilities, and interregional issues;
- protect the natural environment and agricultural and other resources;
- establish a process to monitor change.

Separated municipalities and cities in the North are outside an upper-tier structure, and thus they must plan for these broad issues as though they were upper tiers, as well as for the detailed matters. One important question, discussed later in this chapter, in the section on separated cities and towns, is how to ensure a reasonable planning relationship between separated municipalities and their surrounding areas.

Once the broad context is established in the upper-tier plan, greater detail will be required to address issues of a more local nature, such as:

- the detailed pattern of land use, density, and mix of uses;
- distribution of open space and parks;
- character of the community, including heritage, streetscape, and physical design;
- zoning, site plans, and other tools to regulate development;
- areas of mandated local responsibility, such as fire protection;
- issues of special local interest, such as locally significant wetlands.

Lower-tier plans may address these matters. Where there is no lower-tier plan, they must be addressed in the upper-tier plan.

In the Regional Municipality of Sudbury and in Oxford County, all planning is done by the upper tier, an economically and administratively efficient arrangement that seems to serve the interests of both tiers. In the Region of Waterloo and Huron County, plans are done at both levels, to the satisfaction of both. Municipalities might investigate these arrangements in deciding how detailed planning questions may best be addressed.

As discussed in Chapter 6, municipalities should not be required to obtain provincial approvals for plans and development proposals. As a transitional procedure, the Commission recommends that the new Minister of Municipal Affairs and

Planning approve the first plan adopted by the upper tier once a set of comprehensive policy statements is in place; but after that plan is approved, authority to approve plan amendments, lot creation, and plans of condominium will pass to upper tiers, as is more fully described later in this chapter. To ensure the plan is administered reasonably, a further condition of the transfer of approval authority should be that the upper tier have a full-time qualified planner on staff. Similarly, once the first upper-tier plan is approved by the province, the first plan adopted by the lower tier should be approved by the upper tier. After these conditions are met, municipal approvals should stand unless challenged by the province or some other objector, with any dispute resolved by the Ontario Municipal Board. This change would shift important decision-making down the planning system to the municipal level.

Until an upper-tier plan has been approved under the new system, existing arrangements for the approval of lower-tier plans and plan amendments, as well as lot creation, discussed later, should continue. Once the upper-tier plan is in place and a lower-tier plan has been approved, lower-tier plans and plan amendments must conform to upper-tier plans, but the approval of the upper tier would not be required. Disputes about conformity should be resolved by the Ontario Municipal Board.

It is expected that almost all municipal plans will require amendment to make them consistent with a comprehensive set of provincial policy statements. Plans should be made consistent with these policy statements within three years of the statements' being adopted.

Currently, most counties have no authority over water and sewage infrastructure. If the upper tier is given responsibility for defining settlement patterns, urban and rural boundaries, and lot creation, it makes sense to locate these infrastructure responsibilities at the upper-tier level. This is the arrangement in Oxford County, where the county owns infrastructure systems and the lower tier operates and manages them under contract. The *Municipal Act* should be amended to authorize counties to deal with water, sewage, and waste.

Communication will play an important role in ensuring that upper and lower tiers coordinate their activities, even in cases where approvals play no part. Lower tiers should be required to circulate to upper tiers all plans and plan-amendment proposals and development applications when such proposals and applications are received and when final dispositions have been made. This requirement may vary by agreement between the levels. Upper tiers should be required to circulate to all lower tiers plans and plan-amendment proposals and applications for lot creation when first made, and again when final dispositions are made. Further recommendations about notification are made later in this chapter.

These arrangements will allow all levels to play an active role in matters they find of interest by ensuring that outcomes conform to stated policy. As well, notification when final dispositions are made will provide opportunities for appeals to be filed, if necessary.

Strong Lower Tiers

In some parts of Ontario, lower-tier municipalities have well-developed planning programs to ensure complex local issues are addressed. These municipalities are generally well-funded and have been doing planning for a long time. Any new planning system should allow these arrangements to continue.

The skill and talent available at these large lower tiers should not be overlooked in addressing broad planning questions. Upper-tier planners should take every opportunity to involve lower-tier planners in planning processes around the broad issues. Arrangements should be worked out to share research and analysis, with special attention paid to particular broader issues located in the lower-tier municipality. The whole planning process should be a

cooperative venture, where plan formulation becomes a shared opportunity, even though it is a formal responsibility of the upper tier. This is particularly important in urban areas, where the concerns and decisions of one local municipality easily spill over to affect another. The exact arrangements followed will vary from area to area, even though in each case the broad plan remains an upper-tier responsibility.

For some planning matters, such as lot creation and condominium approvals, it may be appropriate for an upper tier to delegate certain functions to the lower tier, as discussed later in this chapter.

Where upper and lower tiers both have plans, special care must be taken to ensure planning processes are congruent and compatible. As noted, applications and proposals must be circulated by each level of municipal government to the other for review, as well as to appropriate agencies and ministries, and the two levels should work out arrangements to minimize duplication of notification. The upper tier should ensure its concerns are made apparent to the lower tier at the beginning of consideration of a development or plan proposal.

The upper tier must resist the tendency to become embroiled in detail, just as the province must resist this tendency in its relationships with regional and county governments. The upper tier has legitimate interests that are best addressed at the plan stage rather than at the development-application stage. Each tier must respect its legislated planning duties and mandated responsibilities.

Separated Municipalities

There are no general legislated relationships between separated municipalities and surrounding areas. The challenge is to integrate decision-making between them.

Problems are particularly acute in the urban fringe — that buffer zone around each city where developments have an impact on services such as water, sewage, and transit. One can point to examples where these cross-boundary issues are effectively resolved, often because of local political history and personalities. But too many examples can be cited of unhappy relationships marked by a lack of trust and cooperation.

The key is ongoing joint planning. Separated municipalities should notify all adjacent municipalities and counties (and vice-versa) of all proposals and plans, including amendments to existing municipal plans, that have a cross-boundary impact. Joint committees established for general discussion of these matters would prove helpful.

Upper Tiers Without Plans

Regional municipalities without municipal plans should be required to adopt plans within three years of the adoption of a new *Planning Act*. After that time, penalties should be set in place, such as limits of capital borrowing, ineligibility for certain conditional grants, and removal of authority for upper-tier lot levies and delegated approvals. Although they do not now have plans, it should be noted that both Peel and York Regions, two of the fastest-growing regions, are working on plans. Until regional plans are adopted in these situations, the province should continue to approve lower-tier plans and plan amendments.

Counties and planning boards without municipal plans should develop and adopt plans within five years of the adoption of a new *Planning Act*, at which point the penalties mentioned would become effective. Until county and planning board plans are adopted, the province would continue to approve lower-tier or municipal plans, plan amendments, plans of subdivision, and plans of condominium.

Planning in the North

By and large, the cities in the North and the Regional Municipality of Sudbury already have strong planning arrangements. These cities should be treated like separated municipalities in the south; Sudbury is an upper-tier government. Our concerns here are with planning outside these areas.

The most important need is for planning processes and structures to have a strong local base, the capability to make development decisions locally, and the ability to address broad planning questions. Given that local economies are often fragile, communities should first address strategic questions to help chart a course of action that encourages a strong local economy and a supportive community. Planning must also address the same kinds of issues with which other communities in Ontario must deal, including settlement patterns and the environment.

Unlike in Southern Ontario, many northern municipalities find themselves abutting unorganized areas, where there are no municipal decision-making structures. Planning must take place wherever there is development activity or expected activity — whether or not the area is organized. At the same time, planning should take into account watersheds, so that natural features and functions may be protected. Unfortunately, municipal boundaries rarely respect the location or scope of natural features and functions.

In unorganized areas, development control functions and building code and zoning regulations are administered by the province. New planning structures must be capable of assuming these responsibilities in unorganized areas.

Strengthening Existing Structures

Some municipalities and planning boards in the North respond well to the planning needs set out above. Some, because of financial limitations or small size, have problems. Unorganized areas outside of planning boards are without local planning.

Four criteria for a better planning system in the North are:

1. It should be able to address broad planning issues.
2. It should ensure local input and take into account local needs and conditions.
3. It should be adequately staffed and funded.
4. It should have the capacity to plan for unorganized areas and administer those plans.

Of course, the new planning system must also be open, timely, efficient, comprehensive, and fair.

The key to a new system is to build on existing local structures. Existing planning boards should be used as a base. The Commission recommends that planning boards be established or expanded where necessary to ensure the area is large enough to address broad issues. Planning board jurisdiction should incorporate municipalities and adjacent unorganized areas to ensure congruence between decisions within, and just outside, municipal boundaries.

Planning boards permit the coordination and pooling of limited municipal resources. One planning board should be established for each area where municipalities and unorganized areas share common interests and settlements are within the same "sphere of influence." Boundaries should be defined through a consensual local process and approved by the Minister of Municipal Affairs and Planning.

As well, planning areas should not be so large that board members and the public are required to travel excessively long distances to attend regular meetings.

In some situations, because of remoteness, a planning area may be small in population and size. Although planning in this type of situation will not benefit from a sharing of talent and resources, there seems no other reasonable method of dealing with distance and remoteness, which are facts of life in the North.

The areas of board jurisdiction should, wherever possible, reflect a watershed boundary to enable planning for the protection of natural features and functions. In establishing areas, consideration should also be given to current boundaries for school boards, economic development committees, and other local organizations. Aligning planning areas and other administrative boundaries would assist in the coordination of the provision of community services.

A large part of the North is Crown land, which is under the jurisdiction of the Ministry of Natural Resources. Where Crown land is within or adjacent to a planning board's area, the Ministry of Natural Resources should be required to inform the board of proposals for that land and engage in a public planning process.

Planning Board Responsibilities

Planning boards should have three general functions and responsibilities:

1. preparing a plan addressing broad issues;
2. lot creation; and,
3. in unorganized areas, zoning, site-plan control, and building code administration.

The board may also develop strategic plans for the planning area. Plans created by planning boards are similar to those for upper-tier municipalities. However, planning boards are not upper-tier governments and do not have jurisdiction over infrastructure and social programs and facilities. For these matters, the board will have to work with municipalities and provincial ministries and agencies. To ensure comprehensiveness, the board's plan should:

- interpret provincial goals and policies into a planning area;
- address infrastructure, including transportation, water, and sewage treatment, for the planning area;
- establish urban and rural boundaries and settlement patterns;
- address the general nature and distribution of employment and housing across the planning area;
- address area social issues and interregional issues;
- protect the natural environment and agricultural and other resources;
- establish a process to monitor change.

Further details will be required on matters such as:

- the detailed pattern of land use, density, and mix of uses;
- distribution of open space and parks;
- character of the community, including heritage;
- zoning, site plans, and other tools to regulate development;
- areas of mandated local responsibility, such as fire protection;
- issues of special local interest, such as locally significant wetlands.

These details should also be addressed in the board's plan, unless individual municipalities agree to prepare area or neighbourhood plans for this purpose. The board may prepare and approve an area or neighbourhood plan for an unorganized area, and such plans must be in conformity with the board plan. Municipalities should continue to administer zoning and development approval, except where they decide to transfer these functions to the planning board.

As proposed for upper-tier governments, the board's first plan adopted under a comprehensive set of provincial policy statements should be approved by the province.

Until municipalities and unorganized areas are covered by a new plan consistent with a comprehensive set of policy statements, plan amendments should continue to be handled by the province, and existing arrangements regarding lot creation should remain in place. Once the new plan is in place, lot-creation and plan approval will be handled by the board if it has a qualified planner on staff and provincial approval is not required. At this point, the board could administer zoning and building permits in unorganized areas.

Adequate staffing and resources lie at the heart of comprehensive, consultative planning. While few municipalities will be able to afford one full-time planner, the pooling of resources from several municipalities and unorganized areas, as suggested here, may present the best alternative. Several boards may find it advantageous to share the expertise of a planner. It is also anticipated that the province will play a strong role in advising boards.

There are four possible sources of funding: municipalities, the province, user fees, and unorganized areas. Boards should obtain funds from municipalities out of the general levy. They should be permitted to levy and collect funds in unorganized areas in the same manner as boards of education. Planning boards should be able to set licence, permit, and user fees. Funding shares from municipalities and unorganized areas should be pro-rated by assessment. As discussed in Chapter 6, the province should continue to provide planning grants to planning boards.

The board should set its own annual budget. Representation on the board should generally ensure that the budget is acceptable to local authorities.

Representatives from municipalities should be appointed to planning boards by council. These appointees could be elected councillors or non-elected residents, as council decides. Unorganized areas present a larger but not impossible challenge. Since elections for school board members are held in unorganized areas, there is no reason why elections for planning board positions could not also be held. Until legislation is passed to permit elections, representatives should continue to be appointed by the Minister of Municipal Affairs. The Minister should undertake to fill vacancies within three months of receipt of recommendations from planning boards.

Generally, representation should be proportional to the number of electors. Each municipality, regardless of population, should have at least one representative, and unorganized areas, no matter how sparsely populated, should also be represented.

The chair of the board should be elected from among board members. Board membership should be limited to no more than 20 people.

The relationship between Aboriginal communities and municipalities is addressed in Chapter 7 of this Report. Briefly, the Commission suggests more appropriate procedures for notification to Aboriginal communities by planning boards and municipalities; authorizing planning boards and municipalities to enter into agreements for development without compromising outstanding land claims; and providing for Aboriginal representation on planning boards where Aboriginal lands are affected by or are adjacent to land in a board's jurisdiction, and when Aboriginal communities request such representation.

Next Steps

Establishing the geographic jurisdiction of planning boards will be very important if the boards are to function with the support of local communities. The Commission has suggested several criteria for determining areas, including: spheres of influence; travel time; local choice; watersheds and natural features; and other administrative boundaries.

Multi-stakeholder committees — at least one for the Northeast and one for the Northwest — should be appointed by the Minister, after consultation with municipal and other organizations from the North, to make recommendations on planning board areas. These committees should be appointed as quickly as possible after the Commission's Final Report is submitted. The committees should be asked to make their recommendations at the same time draft legislation is submitted, which the Commission hopes will be fall 1993.

Plan-making

Planning takes place at various levels of detail and considers a host of important influences, some of which are outside the municipality's control. To understand the existing situation and to formulate a reasonable plan for the foreseeable future, good planning must consider a number of interrelated factors. It should begin with a general vision of where the municipality should be headed, then analyse factors important to the municipality, then choose between alternatives to reach a final plan. It should ensure that interrelated factors are reasonably understood so projections for the future are realistic.

The processes employed for planning are exceptionally important for its success. Since planning is about community building, resource use, and protection of the natural environment for the long term, those affected and interested should be included in the discussion and the decision-making processes.

This section discusses aspects of municipal planning and sets some parameters for how best to prepare plans that help municipalities shape their future.

Strategic Plans

To set the stage for comprehensive, helpful planning, all municipalities should be encouraged to look at larger issues that affect them and to chart a path to follow in the foreseeable future. Strategic planning can provide vision and guidance for many objectives, including the formulation of municipal, sectoral, and corporate plans. It can encourage public and private partnerships, provide a strong sense of municipal identity, and give local residents some idea of where the municipality is headed.

Upper-tier municipalities should be encouraged to develop a strategic plan and review it once in every council's term. Lower-tier municipalities will probably find the exercise helpful as well.

A strategic plan differs from a municipal plan. It sets priorities for initiatives the municipality wishes to take and focuses on ways in which the municipality might influence other players. It provides coherence for municipal policies and actions. It should be a pro-active document that grapples with big questions and helps to harness energy to seek their answers.

A strategic plan should meet three objectives:

1. *It should address economic, environmental, and social issues important to the community.* These will differ from place to place, and the plan should attempt to focus on regional and local issues in a realistic way. Addressing these issues may involve attention to matters that will be considered in greater detail in the municipal plan; for example, transportation, housing, or infrastructure.
2. *It should be participatory and involve the public.* The strategic plan exercise should be seen as an opportunity for council and municipal staff to work with the community, including business, social, and community leaders, as well as with other government agencies such as boards of education. Common goals and objectives should be identified so a course of action can be agreed upon and resources can be used cooperatively.
3. *The plan should be brief and easy to understand.* A strategic plan should be intelligible to those it is meant to serve — the residents of the community. It should be in plain, non-technical language and produced in a form that can be inexpensively and widely circulated.

Strategic plans should be authorized, legitimized, and encouraged. Since it is a visionary document, a strategic plan should be a separate document (not part of the municipal plan), and not legally enforceable. It should not be appealable to the Ontario Municipal Board. Where the municipality wishes to give legal authority to goals, policies, and options articulated in the strategic plan, those items should be incorporated into the municipal plan.

Municipal Plans*

Municipal plans should have clearly defined legal status and should play an essential role in implementing provincial policy and addressing local issues.

A wide assortment of official plan documents and land-use planning policies are in effect around Ontario. They vary by age, content, and usage. To help municipalities plan effectively and monitor the results of their plans with a reasonable degree of consistency, clarification is needed on the principles, basic processes, and content requirements underlying the preparation of plans and land-use policy documents.

Principles

A number of principles underlying municipal plans are so important that they should be reflected in the *Planning Act*. They are:

1. Municipal plans must be consistent with provincial policy.
2. Counties, regions, separated municipalities, cities in the North, and planning boards should be required to prepare and adopt a municipal plan for the entire area covered by the municipality or board.

* The term "municipal plan" refers to a plan prepared and adopted by an upper- or lower-tier municipality, a separated municipality, a city in the North, or a planning board.

3. Lower-tier municipalities should be authorized to prepare and adopt plans, and these plans must conform to the upper-tier plan. Where an upper-tier plan is amended, the lower tier must bring its plan into conformity within a reasonable time.
4. Municipal plans must be based on appropriate studies.
5. The municipal planning process must include a review of alternatives of such matters as growth, settlement patterns, and infrastructure and the effects of those alternatives on the natural, social, cultural, and economic environments.
6. The geographic basis on which an issue is analysed should be appropriate, even when that basis extends beyond the jurisdiction of the municipality. For example, the implications of planning decisions on water quality and quantity should be assessed on a watershed basis; those regarding natural features, on an appropriate ecosystem basis; and housing issues, on an appropriate regional basis.
7. Where it is apparent to a municipality that issues reasonably involve more than one jurisdiction, policies should be developed jointly.
8. The steps followed in preparing and adopting municipal plans or policies, including the alternatives considered, should be documented.
9. In preparing plans, there must be full public consultation, and all plans, policies, and documentation must be made available to the public.
10. Plans should be oriented to both the change expected and the future desired, in the medium term and the long term, and they should contain goals for the future.

Content

The municipal plan should address matters covered by provincial policy and other matters clearly identified in legislation. The matters covered should be comprehensive to ensure interrelationships are fully understood, although obviously some factors will be more significant to some municipalities than to others. In this regard, the *Planning Act* should include the following provisions:

1. Upper-tier municipal plans* shall contain goals, and shall be based on studies of existing conditions and future projections, and they shall address matters set out in provincial planning policy.
2. Upper-tier municipal plans shall address and contain policies on, but not limited to, a number of matters. These matters are:
   (a) the quality and quantity of ground- and surface water, evaluated on a watershed basis;
   (b) the quality of air;
   (c) contaminated properties;
   (d) hazardous sites, such as lands subject to flooding, erosion, or instability;

* The term "upper-tier municipality" means any county, or a regional, metropolitan, or district municipality. For discussion purposes, the roles and requirement of upper-tier municipalities noted here also apply to separated municipalities, cities in the North, and planning boards.

(e) natural features and systems, such as significant wetlands, recharge areas, ravines, river valleys, stream belts, flood plains, corridors, woodlots, wildlife and fish habitats, and areas of natural and scientific interest;
(f) renewable and non-renewable natural resources within the municipality, such as significant aggregates, forests, fisheries, minerals, and quality agricultural areas;
(g) cultural resources within the municipality, such as matters of architectural, historical, or archaeological heritage;
(h) energy use and conservation opportunities to be pursued;
(i) settlement patterns and population and employment distribution, relating to:
(i) population and age patterns, household size, composition, and distribution;
(ii) income sources and distribution;
(iii) employment opportunities, including sectoral distribution and job locations, and unemployment.
(j) the supply and affordability of housing as related to housing needs and the relationship of income to housing costs;
(k) supporting infrastructure, including:
(i) supply, demand, distribution, and consumption of water, and conservation opportunities to be pursued;
(ii) capacity and demands on public and private sewage and water systems;
(iii) capacity and demands on waste disposal facilities, and waste reduction opportunities to be pursued;
(iv) roads, pedestrian systems, public transit, and other modes of transportation;
(v) the provision of educational, health, and social facilities;
(vi) open space.
(l) monitoring of change in the municipality.

3. Goals, objectives, and policies expressed in the upper-tier plan shall be consistent with provincial policies adopted under section 3 of the *Planning Act*.
4. Upper-tier municipal plans shall include maps of significant features noted in provincial policies adopted under section 3 of the *Planning Act*.
5. The geographic basis for analysis must be appropriate to the specific issue, even when it extends beyond the jurisdiction of the municipality.
6. Lower-tier municipal plans may address any of the matters in the upper-tier plan in more detail, as well as matters of local significance. It is recognized that most legislation to protect heritage gives authority to lower-tier municipalities. Thus, the bulk of policies about cultural resources will be a lower-tier responsibility. When a lower-tier plan is in place, it shall include maps of locally significant features.

In some counties and regions, there will be both upper- and lower-tier plans; in others, after a reasonable transition period, only an upper-tier plan supported by local development controls such as zoning. The Commission recommends that the upper tier should not be permitted to delegate its responsibilities for preparing plans, but the manner in which these responsibilities are carried out will obviously vary from place to place. Cooperation will be a key to successful planning in these situations.

Where only an upper-tier plan is expected to be adopted, it must be detailed enough to ensure development control tools that conform with the plan can be effectively put in place.

The Process of Planning

Environmentally oriented planning To ensure that municipal plans (and amendments) are fairly assessed for their environmental impact, certain steps should be followed.

First, before the substance of a plan or plan amendment is set down, a report should be prepared for public review and approved by council. Such a report should contain:

- a general description of the purpose of the proposed plan review;
- the general scope of the proposed plan review;
- proposals for public consultation and participation by interested agencies; and
- the proposed timetable for plan preparation and consideration.

Second, plan preparation should include the following six steps:

1. Identify problems, priorities, needs, opportunities, and objectives.
2. Identify the criteria by which to evaluate alternatives.
3. Identify reasonable alternatives (including the "do nothing" option) according to their general effects on the full scope of the natural, social, and economic environment (i.e., a broad definition of environment would apply) and their effectiveness in meeting objectives.
4. Select and prepare alternative-plan concepts and compare and assess them using the criteria in Step 2 to determine which concepts best meet objectives in Step 1.
5. Select and refine a preferred plan.
6. Establish monitoring systems and contingency approaches.

As noted, all steps in the process should be documented and reports made available to interested parties. Public involvement should be required throughout the process.

It is recognized that councils never have quite enough information; it is almost impossible to know about all alternatives in great detail, and there is never enough time or money to satisfy everyone. Despite such limits, the proposed planning process offers a fair and reasonable means for looking at needs, alternatives, and environmental impacts.

There is a hierarchy of plans and policies, with lower-tier plans nesting in and conforming to upper-tier plans, which should be consistent with provincial policies. At each level, the range of alternatives that should be considered can be determined by referring to plans and policies at the next level up. Conclusions reached in plans at a higher level govern analysis at a lower level. Decisions already made at a higher level should be open to question only if new or more detailed information, substantial enough to challenge the basis of such decisions, becomes available; in those cases, the higher-level plan should be amended.

Thus, provincial plans and policies provide both a framework for upper-tier plans and the criteria used to evaluate alternatives by the upper tier. Upper-tier plans in turn provide a framework for lower-tier plans.

Reasonable alternatives, including mitigation measures, should be addressed at an appropriate level of detail. This means consideration should be given to how goals can be achieved in different ways. The best way of proceeding must be chosen on that basis.

Objections to and disputes about needs and alternatives, the appropriateness of steps taken, or information considered should be considered first by the body making the plan. Appeals on final decisions may be made to the Ontario Municipal Board.

Planning on a watershed basis

In keeping with proposed provincial policies, municipalities should consider the natural environment before planning for change. With regard to development and change affecting water, the *Planning Act* should require that, in preparing plans, upper-tier municipalities must develop policies based on studies done on a watershed basis. The following matters should be addressed:

- quality and quantity of surface water and groundwater for developed areas of the municipality and other areas likely to undergo change;
- flooding and natural hazards;
- shorelines, marinas, and lakefill;
- tree cover;
- erosion control;
- drainage plans and storm water;
- wetlands, recharge areas, and natural features;
- remediation of water systems and natural features;
- aquatic resources, including fisheries.

In some cases, watershed studies and policies may include other matters, such as wildlife and forestry.

In order to develop these policies, municipalities will often have to undertake studies jointly with others in the watershed, attempting to reach common understanding and agreement with them. Where very large rivers and waterbodies are involved, the province will be expected to play an important role in these studies.

It is anticipated that in many situations, municipalities will turn to conservation authorities to prepare watershed studies and recommendations. Conservation authorities already have a strong track record for studying and attempting to protect the health of watersheds. This experience and expertise should be used in preparing watershed studies and recommendations, in helping mesh the local concerns of municipalities with broader concerns for the natural environment, and for studying the long-term implications of changes.

Municipalities are, however, reluctant to turn over decision-making and planning powers to a regional body such as a conservation authority. Conservation authorities should be given a clear mandate and authority to prepare watershed studies and provide inventory, analysis, and recommendations on watershed policies. But the Commission recommends that municipalities, rather than conservation authorities, make decisions on municipal plans and policies relating to development and change affecting water.

Where no conservation authority is in place, watershed studies will have to be undertaken by municipalities, with the help of the Ministry of Natural Resources.

These proposals provide an enhanced role for conservation authorities, and it is recognized that financial and representational links between conservation authorities and county councils should be improved. These issues must be addressed, although they are beyond the Commission's terms of reference.

While all counties, regions, separated municipalities, cities in the North, and planning boards should be required to do general watershed studies, there should be some triggers to require more detailed sub-watershed studies by upper- or lower-tier governments. Two suggestions for such triggers are: decreased levels of water quality and quantity, and increased development pressure. The upper tier should identify which sub-watershed studies will be undertaken on a priority basis.

The cost of not basing policies on watershed studies is enormous if assessed in terms of undesirable outcomes and the cost of remediation — closed beaches, a decline in biota, and new and replacement sewage and water services. The funding of the studies will also be a concern, but one need not wait for large sums to be allocated. Rather, studies should be done within the funding available. Some innovative approaches will be required; for example, making good use of well-informed local environmental and naturalist groups, and deciding to focus

first on the sub-watershed areas facing the greatest pressure for change.

In Southwestern Ontario, some conservation authorities have been given the authority to issue water-taking permits under the *Ontario Water Resources Act*. The Ministry of the Environment may wish to consider extending this authority to other conservation authorities or upper-tier municipalities, as appropriate. This arrangement may provide greater clarity for sorting out responsibilities for water quantity and management. There may be a need to clarify the mandates of conservation authorities to deal with ecosystem protection matters within existing cut-and-fill regulations.

Finally, under the *Conservation Authorities Act* the appeal of a number of regulatory decisions of a conservation authority is to the Mining and Lands Commissioner. Section 28(5) of the *Conservation Authorities Act* should be amended to provide, instead, an appeal to the Ontario Municipal Board, so consistency with provincial and municipal policies can be considered.

Joint planning Municipalities often share common concerns, such as water bodies, other natural features, and infrastructure, and in many cases the decisions of one municipality directly affect another. In these situations, municipalities should be encouraged to undertake joint planning.

Establishing responsibilities for broad planning issues at the upper tier will reduce the need for joint planning by lower-tier municipalities. However, some joint-planning issues extend beyond one upper-tier jurisdiction, and will require joint planning between upper tiers. There is also a need for joint planning between separated municipalities and adjoining municipalities. As noted, the *Planning Act* should require municipalities to form their policies on an appropriate geographic basis.

The *Planning Act* now permits municipalities to establish a joint-planning committee on a specific issue and enter into agreements on all aspects of the joint endeavour, including cost-sharing, committee structures, and timetables.

Where municipalities are unable to agree, the *Planning Act* should allow any municipality believing joint planning should occur to apply to the Ontario Municipal Board for mediation. If the mediation fails, the Board should be authorized to order a joint-planning structure and a cost-sharing arrangement.

Monitoring As noted earlier, the Commission is recommending that the *Planning Act* require upper-tier municipalities to establish monitoring systems. Policies about how monitoring will occur should be set out in the municipal plan. The *Planning Act* should require upper-tier municipalities to prepare comprehensive monitoring or "state of the environment" reports at least every five years to document changes in the municipality, in conjunction with a five-year review of municipal plans. In preparing such a report, municipalities would identify and select key indicators relevant to their local environments — natural, social, cultural, and economic — and then establish procedures for monitoring them. Indicators chosen should be ones that are currently measured or could be measured at reasonable cost. Monitoring should enable the cumulative effects of what, individually, may seem to be insignificant and unrelated decisions to be recognized and understood.

Plan amendments One of the most significant problems with current official plans is that they are constantly being amended. They provide little certainty, and the fact they change regularly means they cannot function as guides to the future. Too often, the Official Plan is merely a complicated device for controlling site-specific development and adds considerable time to the development review process. Many members of the public are reluctant to invest time and energy in official-plan processes when they know the plan has little permanence.

Municipal plans should function in the same way as municipal budgets. A budget outlines how spending will occur in the coming year (or years, in the case of capital budgets). Budgets set priorities for municipalities and for the public, and, recognizing the unforeseen, they contain a small contingency account. Further, they are reviewed periodically to determine if they continue to meet needs. Municipal plans should fulfil the same kind of function, over a longer timeframe, providing direction to private and municipal development decisions.

The key lies in making reasonable provision for growth and change. A plan must contemplate the future, and be able to accommodate desired change without plan amendments.

There are three kinds of plan amendments, and to ensure reasonable certainty, each kind of amendment should be permitted to proceed under different conditions, subject to appropriate studies, public involvement, and appeals:

1. *General policy changes.* Municipalities should be able to initiate amendments to general policies at any time.
2. *Neighbourhood or area changes.* Municipalities may wish to study particular areas or neighbourhoods. Area and neighbourhood plan amendments should be permitted at any time.
3. *Site-specific changes.* Municipalities may approve site-specific amendments under one or more of the following circumstances:
   (a) the policies in the plan approved for the site were originally approved on the basis of information subsequently found erroneous; or
   (b) the amendment is for the purpose of being consistent with changes to provincial or upper-tier policies or plans; or
   (c) the amendment is consistent with general policies in the municipal plan and the proposal will result in significant public benefits.

In considering any site-specific amendments, studies must be done on an area or neighbourhood basis.

Appeals in support of site-specific amendments should be considered by the Ontario Municipal Board in light of the conditions set out above. In order to coordinate planning reviews and public participation, it would be helpful if proposals for plan amendments were not submitted on an ad hoc basis. Municipalities should be permitted to limit times during the year when applications for municipal plan amendments will be received, provided that the time period be at least 10 working days per year. The current provision of the *Planning Act* (section 22(1)) permitting a request for referral to the OMB if municipalities have not considered applications within 30 days should be replaced by a provision permitting an appeal after six months.

It is important that plans be reviewed with regularity to ensure they are appropriate to changing circumstances. This review should occur at least every five years, and, as part of the review, council would at a minimum hold a public meeting at which public comment would be received.

Public involvement Public involvement in the planning process is crucial. Many have noted from personal experience that involvement by the public substantially improves the quality of decisions. As well, these decisions prove more amenable to the population at large.

General principles about public involvement that should be embodied in legislation are:

1. Information is a basic requirement. An individual should be entitled to see and copy all information supporting applications and all staff reports on applications. Architects, engineers, and other professionals must agree that drawings, plans, and documents filed in support of applications can be reviewed for purposes of public information and debate. If charges are to be made for documents, they should be very modest.
2. Council and committee meetings must be open to the public, and decision-making regarding plans and planning must be carried out publicly.
3. Those affected by proposed changes must be notified, in plain and simple language, in advance of decisions being made.
4. Interested parties must be given an opportunity to be heard at appropriate points in the process.
5. The process should be easily understood, accessible, and timely.

Experience in a number of municipalities has shown that the earlier the public is involved, the better the decisions are for everyone, including the developer. Working committees of interested parties involve the public in policies and development and are preferable to the sometimes perfunctory public meetings held almost at the end of the decision-making process. The best public involvement comes when the municipality makes clear its commitment to such participation. Municipalities should be encouraged to develop procedures for public input that fit local needs and conditions and go beyond those set out in the *Planning Act*.

The *Planning Act* should authorize and legitimize advisory committees established by municipalities to advise on matters such as the natural environment, agriculture, and housing. These committees could be a valuable resource to the municipality.

The following minimum process should be set out in the *Planning Act* for municipal plan creation and amendment:

1. Publication of intent to consider policy change.
2. Opportunity for public response, including at least one public meeting.
3. Preparation and circulation of draft proposal (including alternatives).
4. Opportunity for response, including at least one public meeting.
5. Final decision-making.
6. Notification of decision.

At the beginning of each process, a preliminary report prepared by the municipality should indicate the process that will be used with the plan or matter under consideration, the approaches that will be used for public involvement, the opportunities for public comment, and the timeframes to be met. This report would permit the public to be aware of the proposed process — and to debate it — at the early stages. Everyone will benefit from knowing what is to be expected.

This preliminary report might also provide the municipality with the opportunity to indicate that the plan amendment does not meet the conditions for site-specific amendments and should be rejected without further study. Saying "no" is often difficult. This suggested procedure may be useful in that regard.

Implementation

Plans set a course for the future and, at the municipal level, are implemented through various mechanisms. This section deals with lot creation, development control, and municipal infrastructure.

Lot Creation

New lots are created by way of either subdivision or consent. Although the *Planning Act* does not direct which process should be used, the creation of more than three or four lots normally goes through the subdivision process. To avoid the more complicated and time-consuming requirements for subdivision approval, some municipalities use the consent procedure to create subdivisions of large numbers of lots.

The dramatic increase in the number of lots created by individual consents in the last decade, and the creation of subdivisions through the consent process, have raised environmental and other concerns about the cumulative effects of approving so many lots without the full scrutiny of the subdivision approval process.

At present, plans of subdivision must be approved by the Minister or a municipality that has been delegated the Minister's approval powers. Subdivision approval has now been delegated to all regional municipalities (except for Haldimand-Norfolk); the counties of Huron and Oxford; and the separated cities of Belleville, Brockville, Kingston, North Bay, Peterborough, Sault Ste. Marie, Thunder Bay, and Timmins.

The authority to grant consents is given to counties and regions; in some cases it is given to local councils and planning boards, and in certain circumstances to the Minister. With the approval of the Minister, that authority may be further delegated from counties and regions to local municipalities. This has resulted in considerable variety in the bodies that have consent-granting authority across the province. Twenty of 39 regions and counties have delegated consent-granting authority to 144 lower-tier municipalities. Because of concerns raised about the exercise of this authority, there has been no new delegation of consent-granting authority to lower-tier municipalities in almost five years. In fact, one county recently took back consent approval from five local municipalities.

Applications for plans of subdivision must contain information on such matters as availability and nature of domestic water supplies, nature and porosity of the soil, and the availability of municipal services, and the boundaries of the area to be subdivided must be certified by an Ontario land surveyor. Requirements for consent applications are not as stringent, and a survey is not required.

The *Planning Act* does not require notice to the public generally or to abutting landowners specifically for either type of application. When proposals for lot creation also require amendments to the Official Plan or zoning by-law, these applications will normally be processed concurrently. This is how the public would usually find out about applications for subdivisions.

Although there is currently no notice required for plans of subdivision, appeals may be made by anyone at any time before draft approval has been given. If the application is refused, an appeal may be made only by the applicant. Concerned citizens have no right of appeal after draft approval is granted.

Although public notice of consent applications is not required under the Act, approval authorities must give notice to anyone submitting a written request to receive notice. Only the applicant, the Minister, agencies, or persons who have received notice of the decision may appeal to the Ontario Municipal Board.

A number of municipalities and organizations have suggested that there be one system of lot creation in the province and that the distinction between applications for subdivision and those for consents be eliminated. It should be noted that in Canada, only Ontario has a consent procedure; most other

provinces define subdivision as the division of any area of land into two or more parcels. The same issues in each case should be considered, and the same rigour demonstrated in analysing the issues. Further, the same body should deal with all lot-creation applications. The Commission recommends there be one system of lot creation in Ontario.

The requirements for subdivision application now set out in the *Planning Act* should apply to all lot creation, with one exception: in the case of an application to divide an area of land into two parcels, a survey should only be required as a condition of draft approval.

One difference between consents and subdivisions is that consents are not now required to be processed under the *Certification of Titles Act*. The establishment of one system of lot creation may require this processing for all lots, and in the short term may cause some delay in registration. However, certification of title by the province provides protection for future landowners. In any event, Ontario is moving from a registry to a full land-titles system.

If responsibility for lot creation is lodged at the upper tier, it would ensure that the question of conformity is determined at the level at which community development policy is formulated; and there would be consistency of interpretation over a large area. The Commission recommends that lot creation be assigned to upper-tier and separated municipalities, cities in the North, and planning boards. This responsibility may be delegated to lower-tier municipalities where:

1. upper- and lower-tier plans have been adopted under the proposed comprehensive set of provincial policy statements and the lower-tier plan is in conformity with the upper-tier plan; and
2. the lower tier has a full-time qualified planner on staff; and
3. any conditions set by the upper tier are met.

Whether at the upper- or lower-tier level, decisions about lot creation would be made by the municipal council, or delegated to a committee appointed by council or to a qualified planner on staff. Appeals on lot-creation decisions may be made by anyone to the Ontario Municipal Board.

Regarding applications for lot creation that conform to plans, issues of needs and alternative locations do not have to be examined. Applications that may have the potential for impact on environmental features and functions, as identified in provincial and municipal policies and plans, should be accompanied by an environmental impact statement appropriate to the scope of the project. This statement should consider and evaluate on-site alternatives, on- and off-site impact, and various mitigation measures. It is expected that smaller projects will not be subject to this kind of review. Council should not make decisions on projects until such statements are available.

Development Control

Development controls ensure that development proposals conform to the plan and that policies about what will be permitted can actually be enforced.

Since they apply to particular proposals, development controls by their very nature deal with questions of detail. The broader questions have already been assigned to municipal plans and policies and no longer are up for debate when a development proposal is being considered. The two issues central to the consideration of development control procedures by municipalities are level of detail to be addressed by the council, and extent of public involvement.

Zoning is the most common method of development control used by municipalities. No suggestions for major change to zoning powers have been made to the Commission, or are proposed.

Streetscape and physical design guidelines Design guidelines help create coherence of physical form and predictable and pleasing relationships between buildings, streets, and landscapes. Streetscapes from previous centuries convey the feeling that the buildings were designed with common principles in mind. Many observers have noted this quality about European cities or even blocks of 19th century commercial and housing developments in Canadian cities and towns.

Design guidelines are a method of exercising general control over building form, and their use has recently attracted considerable attention. Andres Duany and Elizabeth Plater-Zyberk, the designers of Seaside in Florida and numerous other new communities in the United States and Canada, base much of their planning emphasis on design controls rather than use or density. The controls they recommend deal with building placement (they are fussy about setbacks and build-to lines); height; location of parking; and location of permitted balconies and stoops. In the United Kingdom, planner Leon Krier, confidant of the Prince of Wales, advocates similar controls.

The *Planning Act* currently authorizes site-plan control to deal with the details of individual buildings, but it does not recognize design guidelines that specify common parameters for groups of buildings on the same street.

The Commission recommends that design guidelines be explicitly authorized in the *Planning Act*. They would describe, within a defined area such as a downtown, the desired relationship of buildings to one another and to the street, with reference to location and bulk. Some items can be dealt with through zoning, and some through site-plan control. The simplest design controls are setbacks from street-lines and build-to lines, and height. Both can be implemented through zoning. Setbacks are important to ensure some uniformity in the manner in which streets and public open space are designed — for instance, there is a significant difference in the "feel" of a street that allows parking in front of buildings and one that requires buildings to be placed at the edge of the sidewalk. Height is important because of its effects on sunlight, wind, view-plains, and general look. Other controls are possible, such as angular planes, which would limit height according to angles measured from street-lines; or slanted and straight roof-lines.

Design guidelines could be stated in a municipal plan. The development of design guidelines for an area proposed for intensification would pose an excellent opportunity for public debate (and agreement) on general design questions. The guidelines can be implemented through municipal plan policies, zoning, and site-plan control.

Councils should be encouraged to develop, with full public consultation, design guidelines for appropriate parts of the municipality and to include such guidelines in the municipal plan.

Environmental impact statements Lot-creation, rezoning, and development permit applications that may have the potential for impact on environmental features and functions, as identified in provincial and municipal policies and plans, should be accompanied by an environmental impact statement (EIS) appropriate to the scope of the project. The EIS would consider and evaluate on-site alternatives, on- and off-site impact, and various mitigation measures. It is expected that smaller projects would not be subject to this kind of review. Council should not make decisions on projects until such statements are available.

Site-plan control Whereas design guidelines set out the principles for structures in defined districts, site-plan control deals with individual projects on a site-by-site basis. Current site-plan control provisions permit municipalities to designate areas in official plans where developers, prior to obtaining a building permit, must enter into agreements regarding such matters as the

placement of buildings on the lot. Site-plan control agreements are the last stage of development approval.

The intent of site-plan control was to permit council to deal with the siting of structures, ingress and egress, utilities, and landscaping. As developments grew in scale during the 1960s and 1970s, with significant impacts on the street and neighbouring properties, such matters became increasingly important. In exercising their powers, many councils have attempted to extend their authority to include architectural detail and colour. In the rush for final approval, developers have often bitten their tongues and agreed to things they considered to be both unnecessary and not permitted by legislation.

Site-plan matters are questions of detail, and the current *Planning Act* does not contain provision for public involvement. Negotiation of site-plan agreements is generally left to staff. Many site-plan cases deal with minor matters that are not contentious and are easily resolved between the staff and the developer.

Some have suggested that public notification for site plans be a requirement of the *Planning Act*. Many large projects are subject to rezoning and will require public notification and discussion where many site issues can be raised and resolved. Further, such developments may be subject to requirements for environmental impact statements. These processes should ensure that the public is involved in most matters of major public interest.

There may be, however, cases where rezoning or environmental impact statements are not required, but where the issues raised at the site-plan stage are significant enough that staff alone cannot be expected to resolve them. Public comment and political debate are required. Some councils now use procedures that elevate site-plan agreements from the staff to the political level when such issues are apparent. Rather than requiring public notification, the Commission recommends leaving to councils the question of public involvement in site planning. The *Planning Act* should be amended to permit councils to develop procedures for public input into site-plan agreements.

There is considerable debate about the need for council control over types and texture of material, colour, or architectural detail. For obvious reasons, it is reasonable to exercise this control over buildings designated pursuant to the *Ontario Heritage Act*; such buildings have already been selected for special attention. But there is considerable doubt that this control should extend to other structures. Just as homeowners would not want council dictating what colours they may paint their buildings or with what materials they must cover their houses, council should not be permitted to set rules on these matters for other owners. Controls on building bulk and the relationship of structures to the street — design guidelines, as they have been referred to above — provide adequate protection to the public interests, along with current provisions of site-plan control, even for buildings in prominent locations.

The Commission recommends that current provisions of site-plan approvals not be expanded to include colour, texture, type of materials, window detail, construction details, architectural detail, and interior design, except in heritage districts under the *Ontario Heritage Act*.

Site-plan controls should be consistent with provincial policy, municipal policy, and zoning by-laws. Since they are a matter of detail, they should not be available to an upper-tier government or planning board that does not exercise development control functions.

As a method of achieving public objectives, some municipalities have found undertakings from developers to be as effective as registered site-plan agreements — and speedier. This procedure should be explored by municipalities. Decisions regarding site-plan control may be appealed by the applicant or an affected upper- or lower-tier government.

In addition, the Commission recommends that authority for site-plan agreements be widened to include off-site matters that relate directly to the development proposed; any requirement regarding phasing, transfer of density, bonusing, infrastructure, or other matter, provided such matter be authorized by provincial or municipal policy; conditions necessary for environmental protection and improvement, including storm-water management, site alterations, and noise; and financial arrangements, including bonding.

After notice to the owner, councils should be permitted to terminate conditions set out in site-plan agreements in cases of hardship or where circumstances have materially changed and decisions regarding requests to terminate an agreement may be appealed to the Ontario Municipal Board by the applicant.

Development permits In some Canadian jurisdictions, development is reviewed under a development permit system. In these situations, council sets the general policies of acceptable development, and the details are determined by staff in negotiation with the applicant. This process resolves detail in a speedy manner, helps tailor development to the conditions and peculiarities of the site on which it is located, and ensures that stated public objectives are met.

Unlike the site-plan control process, the development permit process allows details of density and use, as well as matters of physical form, to be included in negotiations conducted by staff. Thus, in a development permit system, council must set limits on the discretion to be exercised by staff with respect to density and use. As well, design guidelines, into which new structures must generally fit, must be established.

An important question is the extent to which the public becomes involved after council sets policies about design guidelines and the limits of staff discretion. On the filing of an application, Vancouver requires the posting of a drawing of the proposed project on the site, with appropriate telephone numbers to call for information. The planning staff handling the application are often identified for easy contact. Applications are rarely referred to council but are handled by a staff committee in consultation with a small review committee, which is appointed by council and consists of individuals with an interest, such as designers, residents, and developers.

Adapting this system to the Ontario milieu may require some experimentation, but the similarities to processes for design guidelines and site-plan control seem quite clear. An appointed committee to advise the staff committee dealing with applications would seem a wise move. Public involvement should be limited to two instances beyond the general debate on the guidelines adopted to limit staff discretion. In the first, following notice of an application, there would be comment to staff and the appointed committee. In the second, when a development permit moves from the purview of the staff committee to be debated by council, comment would be pursuant to policy adopted by council. Appeals should be permitted to the Ontario Municipal Board on the question of the application of design guidelines to the specific instance.

In essence, the development permit system might be characterized as one where the policies — general densities and uses, and design guidelines — are set by council, and the details are then worked out on a site-by-site basis between the applicant and the staff, with some public input. Processes for site-specific rezoning and site-plan control would not be needed, so the potential for saving time is considerable. For some Ontario municipalities, such an approach has much to offer.

In light of the above, the Commission is proposing that the *Planning Act* be amended to permit a municipality to adopt a development permit process for any part of the municipality, and delegate permit approvals to staff, provided:

1. council has adopted, after public debate, development permit zones defining standards, uses, and design guidelines for the affected part of the municipality, including general questions of form, density, use, and the provision of environmental impact statements; and
2. council has adopted procedures for public notification of applications for development permits; and
3. council has appointed an advisory committee consisting of a broad range of interests, such as developers, community leaders, and individuals with an interest in design, to advise staff on development permit applications; and
4. council has adopted a policy through which development permit applications will be considered by council rather than by the staff committee alone.

As well, the Commission proposes that appeals of development permit decisions should be allowed to be made to the Ontario Municipal Board.

Sewage and water capacity
In some municipalities, the allocation of limited sewage and water capacity has been given to developments that seem unlikely ever to proceed, blocking other opportunities for new development. A sunset provision should be included in subdivision agreements so that the allocation, if not used, may be recalled and reallocated. If these rules are set in policy and known in advance, developers can then plan within them. A fair process is important for the success of these arrangements.

Sewage and water allocation questions will be more easily resolved once a municipality has a growth management and infrastructure plan, as proposed earlier in this chapter.

Accordingly, the Commission recommends that legislation permit council to establish provisions in the municipal plan for sunset provisions on sewage and water allocations and to cancel, no sooner than 12 months after the municipality has adopted such policies, any allocation made before the policy was adopted. As well, municipalities should have the authority to reserve capacity for a reasonable amount of development that might proceed without rezoning, such as minor infill and second units. Anyone should have the right to appeal sewage and water allocation decisions to the Ontario Municipal Board.

Bonusing and density transfers* Ad hoc, site-by-site bonusing generally has not worked well, and the public does not like it: it smacks of "let's make a deal" planning. Planners complain they are put in the unenviable position of being questioned on whether they negotiated a good enough deal. Ad hoc bonusing makes a mockery of certainty in planning.

Transfers of density can produce public benefits in cases of large developments. For example, transfers have been helpful in protecting historic buildings and securing open space. But policies must be set in advance, rather than on a case-by-case basis. Municipalities should have the ability to secure obligations by agreement.

Ad hoc, site-by-site bonusing should not be allowed. However, council should be authorized to set general policies permitting bonuses in defined areas in return for stated public benefits, provided a proposal meets criteria set by council.

Council should be authorized to permit any transfer of density if the municipal plan states the policies outlining the purposes and criteria of such transfers, and establishes geographical limits for development areas where land values are comparable.

* The award of extra density in return for specified public benefits is usually called bonusing.

Site alterations Municipalities need comprehensive powers to control alterations of sites, whether grading, dumping, tree cutting, or removal of top soil or other materials like peat. Some of these matters are being addressed through legislation such as the existing *Topsoil Preservation Act* and the proposed amendments to the *Trees Act*.

A number of issues are involved: the kinds of activities that should be controlled; how site information can be collected; how to overcome the difficulty in knowing what was there before the change; how to set controls in place without provoking destruction; and finding effective remedies. Sometimes the only party who knows the extent of site alteration that has occurred is the land owner who permitted the alteration. In such cases, the familiar legal device of assigning the burden of proof to the defendant seems the best method for determining exactly what happened.

Further, the municipality should be assured power of entry to inspect sites. In cases where court-imposed fines are not a sufficient method to restore sites, the municipality should be assured it has the ability to restore the site itself and levy costs on the property taxes. Existing authority under section 31 of the *Planning Act* to remedy breaches of municipal by-laws, although rarely used by municipalities, seems adequate to address these issues once the authority over site alterations is widened, and the power of entry for inspection is clear.

Some councils will make use of, in different ways and to different degrees, the powers suggested here. These powers should be discretionary, not mandatory.

The Commission is proposing that the *Planning Act* and other legislation be amended so that:

1. Municipalities are permitted to regulate tree cutting, vegetation removal, changes in elevation, and placement and removal of fill, and removal of top soil and peat.
2. Municipalities are permitted to designate areas and apply different levels of site-alteration control to different areas, provided policies for each are spelled out in the municipal plan or appropriate by-law.
3. Municipalities are permitted to define areas by current aerial photo as an alternative to surveys.
4. To control tree cutting and other site changes in anticipation of new rules, municipalities are permitted to set interim controls in a particular area without prior public notice, provided notice immediately follows the decision, and opportunities for public debate and reconsideration are then made available.
5. To deal with questions of proof about the site prior to change, the defendant is required to disclose the condition of the site prior to alleged alterations, to show alterations did not damage the site in contravention of by-laws.
6. Municipalities are permitted to enter the property for the purpose of inspections to ensure conformity with municipal by-laws.
7. Adequate penalties and remedies are provided for breach of site-alteration laws.

Minor variances A great deal of time and energy is spent on minor adjustments to zoning by-laws that have no significant impact on public interests. Procedures for these matters should be much more expeditious. Appeal periods should be shortened and minor questions assigned to staff. Provisions should ensure public hearing and decision-making processes.

To legalize or provide for changes and additions to existing buildings or structures, councils should be permitted to delegate to staff the authority to approve variances of up to 10 percent from controls, including setbacks, height, angular plans, density, loading spaces, parking, and coverage. No public notice is required in these cases. Where staff deny the request for variance, application can be made to the Committee of Adjustment. Hearings and decision-making processes of committees of adjustment should be conducted in public, and the appeal period for Committee of Adjustment decisions should be shortened to 14 days from notification of the decision, from the current 30 days.

Municipal Infrastructure

Some types of municipal infrastructure projects recur with regularity and are limited in scale — some road widenings, or the provision of some piped services — and common approaches can be used to reduce impacts. These are currently subject to a standard environmental assessment procedure, the Class Environmental Assessment (Class EA) process under the *Environmental Assessment Act*.

The Class EA process outlines a series of steps, including requirements for public input, that must be taken to ensure the environmental effects of the new road or sewer are assessed. It also classifies projects according to expected environmental impacts, and those with the potential for adverse effects must be accompanied by an environmental study report. Class EA is a self-assessment process undertaken by the municipality. The Class EA document that sets up a process for project assessment is approved by the Minister of the Environment.

Objectors may request the Minister of the Environment to "bump-up" a project from a simple review under Class EA to a full-scale, individual environmental assessment.

An increasing number of requests for "bump-ups" of municipal infrastructure projects have been made during the past few years. Generally, the objectors claim that adequate studies of need and alternatives have not been done, and that a project may not be necessary if alternatives are pursued. There have also been requests for bump-ups of projects that, because of scale and impact, are thought to have been inappropriately placed in the Class EA process. The number of bump-up requests indicates that people are not confident that larger environmental concerns are being addressed. In fact, the bump-up procedure does not ensure concerns will be dealt with, since it is not a right of appeal, and most bump-up requests are turned down by the Minister.

Infrastructure decisions are integral to the municipal planning process, and the confusion between processes under the *Planning Act* and the *Environmental Assessment Act* leads to uncertainty.

These problems must be addressed, and the Commission proposes a number of changes. Establishing a procedure for assessing small-scale, recurring types of municipal infrastructure, lodged within the *Planning Act* and with a clearly defined appeal mechanism, would be an important step forward.

Questions of need and alternatives for road, sewer, and water infrastructure — both public and private — must be addressed by municipalities when they prepare their municipal plans. Most infrastructure

projects are dependent on decisions made in the municipal plan. As noted earlier, one of the main functions of planning is to look at such matters.

If questions of need and alternatives are dealt with in the municipal plan, the significant issue then becomes ensuring that the infrastructure is designed to have the least net impact — or, stated more positively, the most beneficial impact — on the natural environment. Currently, any review of these infrastructure projects is undertaken through a Class Environmental Assessment process established under the *Environmental Assessment Act*. Given the linkage between municipal planning and infrastructure development, it would make sense to move review of these projects into a class environmental process under the *Planning Act*.

Projects that fall into the class environmental process should be defined in the *Planning Act* as having the following characteristics: they are recurring; are similar in nature; are limited in scale; have only a predictable range of environmental effects; and are responsive to standard mitigation measures. Projects not meeting these characteristics would continue to be subject to the *Environmental Assessment Act*.

To distinguish this procedure from Class Environmental Assessment under the *Environmental Assessment Act*, this standard procedure should be called the Class Environmental Review (Class ER).

The Class ER document, outlining matters to be considered in developing alternative design and mitigation measures for public and private infrastructure at the municipal level, should be developed (in a process that involves interested groups) and approved under the *Environmental Assessment Act* by the Minister of the Environment. This document can then be used under the *Planning Act* and all municipalities will then have a common process to follow in reviewing infrastructure design. Final decisions about projects should not be made by councils until the studies required by the Class ER process are available and considered by council and council is satisfied that the requirements of the Class ER have been met. There should be public notice of completion of the review and the study should be publicly available, as is now the case with Class Environmental Assessments.

Those who question whether municipalities have studied needs and alternatives will be able to take their concerns to the Ontario Municipal Board by appealing the relevant plans, or, as noted below, by appealing the applicability of the Class ER to a specific project. Thus, the "bump-up" provisions of the *Environmental Assessment Act* would be replaced by certainty of appeals under the *Planning Act*.

Those who feel that an infrastructure project is wrongly considered under Class ER because it does not fit the definition of class, or believe the studies prepared are not adequate or do not meet the requirements of the Class ER process, should be permitted to appeal to the Ontario Municipal Board. If the OMB rules the project does not meet the definition, the project would be subject to the *Environmental Assessment Act*. If the OMB rules the studies are inadequate or the Class ER process requirements have not been fulfilled, then the project should not be approved.

Those who quarrel with the adequacy of need-and-alternatives studies concerning an infrastructure proposal should have a right to appeal to the Ontario Municipal Board at the planning stage. This process differs from the present one under the *Environmental Assessment Act*, which only allows a person to ask the Minister of the Environment for a bump-up to a full environmental assessment.

Requirement for notification of the Class ER process should generally be the same as required for site-specific plan amendments (as outlined in the following section of this chapter). The period for filing appeals would be 21 calendar days.

Because use of the Class ER process assumes that questions of need and alternatives have been addressed in the municipal plan, this procedure should not come into effect until an upper-tier plan, consistent with provincial policies, is approved by the Minister under the amended *Planning Act*.

Amendments to the *Environmental Assessment Act*, as well as to the *Planning Act*, will be necessary to put this process in place.

Some infrastructure projects do not fit this definition of being "recurring" and "limited in scale" — landfills and large sewage-treatment projects, for instance. These projects should continue to be dealt with under the *Environmental Assessment Act*, along with provincial and provincial agency undertakings. The opportunity to designate large-scale private-sector undertakings with major environmental impacts (such as incinerators and mines) should continue to exist.

Concerns have been expressed about the processing of these large projects, and proposals for change have emerged from ongoing reviews of the *Environmental Assessment Act*. Much can be accomplished through administrative reform, such as clearly defining the scope of issues to be addressed in the hearing process.

Public Meetings, Notification, and Appeal Periods

The *Planning Act* sets out numerous requirements for public meetings and notification of planning actions, decisions, and appeals. These provisions are inconsistent and inadequate, and the differences in time limits have little rhyme or reason. To make the system more understandable, it is important to simplify and rationalize these provisions.

The Commission believes there should be expanded notification provisions and opportunities for public involvement.

The Commission recommends that municipalities be required to maintain a registry of those parties requesting notification of planning matters in the municipality or in parts of the municipality. A modest fee may be charged for this service. A municipality may establish administrative policies setting out geographic areas within which notices will be sent (for example, on a defined neighbourhood basis).

Where notification must be given to the general public, it should be through a newspaper advertisement or by direct mail to those on the assessment roll. The notice should be in plain and clear language, easily understood by most residents.

For site-specific notification, owners and occupiers within 120 metres of the property subject to the change should be notified, and in areas where a 120-metre radius reaches only the next owner, notice should also be to the owners and occupiers of the properties abutting adjacent properties. This proposed change to existing notification requirements is more responsive to rural situations, where properties are very large.

On-site signage is encouraged for site-specific changes or projects. It may contain a sketch, a very brief description of height, bulk, and use, and telephone numbers for obtaining information.

There should be a minimum of two public meetings for the consideration of plans, general plan amendments, and comprehensive zoning by-laws: one at the beginning of the process, when the first report is considered; and the other at the end of the process, when final reports are being considered. Where a decision is made at the first meeting not to proceed with the proposed planning exercise, one public meeting will, of course, be all that is needed.

For the first meeting, council should have before it a report describing the problem to be addressed; a timeframe for preparing the plan, plan amendment, or by-law and submitting it to council; and the proposed method of involving the public.

Notice should be given to the general public, those on the registry, boards of education, adjacent municipalities, the upper- or lower- tier municipalities as applicable, ministries and provincial agencies, and Aboriginal communities deemed to have an interest in the matter. A second notice and public meeting are required when final recommendations are submitted to council. A reasonable opportunity for public comment should be permitted at both meetings.

For site-specific plan amendments, neighbourhood and area plan amendments, rezonings, lot creation, minor variances, and site plans (where council policy requires notice), notice of application should be given to those within 120 metres (or the greater area, as outlined above), those on the registry wishing notice, the upper- or lower-tier municipalities as applicable, boards of education, ministries, provincial and municipal agencies, and Aboriginal communities deemed to have an interest. Any body may indicate it does not wish to receive notice of certain applications, and in this case notice need not be given. A public meeting must be held when final recommendations are submitted to council and before council has made a decision, and similar notice of this meeting will be given. A reasonable opportunity for public comment would be permitted at this meeting.

Where reasonable, applications for differing kinds of approvals for the same property should be dealt with concurrently. For instance, applications for lot creation and rezoning should be considered together. Where lot-creation functions have been delegated by council, it is the delegated body that will hold the public meeting.

Municipalities are expected to develop additional methods of public involvement appropriate to their own community needs. The municipal council must give adequate notice of required public meetings.

The Commission recommends the following notice be given for meetings:

- Public meetings to consider plans, general plan amendments, and comprehensive zoning by-laws
  — 30 calendar days
- Public meetings to consider site-specific or area-plan amendments, rezonings, lot creation
  — 21 calendar days
- Committee of Adjustment matters
  — 14 calendar days
- Site plan (where required by council policy)
  — to be determined by council

There must be adequate time periods for filing with the municipality the notice of appeal to the Ontario Municipal Board. The Commission recommends the following appeal periods from notification of the decision:

- Plans, plan amendments of any kind, comprehensive zoning by-laws
  — 60 calendar days
- Rezoning, lot creation, site-plan control
  — 21 calendar days
- Class Environmental review
  — 21 calendar days
- Minor variances
  — 14 calendar days

If a council has not made a final decision on an application for site-specific plan amendment, lot creation, or rezoning within six months of the submission of a completed application, the matter may be appealed to the Ontario Municipal Board.

9
Conflicts, Disputes, and Appeals

Many people commented to the Commission that the planning process has become too adversarial, and that steps should be taken to make it more consensual.

Planning is, by its nature, controversial. People have different ideas about what planning should actually achieve, so in the best of all possible planning systems there are bound to be disputes that arise over decisions. A good planning system will incorporate processes to resolve or settle these disputes.

Steps should be taken to identify possible disputes as early as possible in the planning process. Several of the Commission's recommendations address this need. Provincial policy statements have been proposed to establish a general set of priorities for planning and a framework for decisions. Within that framework, municipalities should state objectives up front, and plans should define in advance what might and should occur in the future.

Focusing debate on the principles and policies underlying plans should establish common ground from which to look at the often contentious details of specific development applications. Agreeing on larger principles may broaden the perspective and reduce the concern about details of a particular proposal, thereby reducing the adversarial nature of planning.

Much energy is now devoted to obtaining — and opposing — plan amendments at the municipal level. The Commission has made a number of recommendations to require more long-range planning and less ad-hockery. Recommendations are made to discourage site-specific plan amendments. Further, the quality of plans should be improved by the Commission's proposal to include in the *Planning Act* provisions that require upper-tier municipalities not only to plan, but also to define the matters that must be addressed in their plans.

Planning can be made more consensual by ensuring that everyone interested in outcomes is involved as early as possible in the planning process. The earlier that people learn of proposals and have a chance to become involved in the process, the less likely they will feel imposed upon by the decisions of others — something that generates anger and hostility — and the more likely that agreement will be reached.

The Commission's proposals call for early notification both on policy matters and on development applications that require changes in policy. Recommendations include requirements for municipalities to indicate, at the beginning of major planning exercises, the ways in which the public will be involved and the tentative timetable for the process. This information will help provide all parties with some idea of what is expected.

Even after a municipality makes a decision, unresolved disputes often remain. Parties to a dispute should be encouraged

to settle their differences, provided the settlement respects provincial and municipal policy. Mediation should be encouraged, and in this regard the recent initiatives of the provincial facilitator, Dale Martin, are to be commended. These initiatives encourage municipalities to call the parties together to discuss the settlement options after a council decision, but before any OMB hearing. However, this kind of process requires parties to agree on the methods used to resolve the dispute. There are questions about how often such a meeting of minds among adversaries will take place, particularly in a way that ensures consistency with provincial and municipal policies.

Ontario Municipal Board

The key dispute-resolution mechanism, after decisions have been made at the municipal level, is the Ontario Municipal Board.

Throughout the past year, the Commission has found broad support for the OMB and the role it plays as an independent arbiter and decision-maker. However, almost universal concern was expressed about the delay involved in scheduling hearings — from 12 to 18 months. Thus, the main areas of change in the OMB should be directed toward having appeals heard and disputes settled more quickly.

The Commission considered and rejected the idea of limiting rights of appeal. Not only is it inappropriate for the OMB to become less accessible, but conditions and limits would also very likely lead to further delay as parties argued before the Board — and then possibly before the courts — about whether the grounds of appeal had actually been met.

Instead, it is better to focus on ways to make the dispute-resolution mechanism more effective and efficient while still ensuring the process is fair to all parties. The OMB has an important role to play in resolving disputes, and more energy should be focused on this aspect of its work. The OMB has already taken initiatives in this very direction. The following proposals of the Commission complement these approaches.

A notice of appeal should state the reasons for appeal, so that a reasonable understanding of the matters in dispute can be gained from the document itself.

To ensure a common base of information about the issues involved in the appeal, the municipality should be encouraged to convene a meeting of the appellant(s) and other participants who have an interest in the appeal to discuss the matter generally. It is hoped this meeting will result in the dispute being resolved, or at least in a narrowing of the issues. The OMB should have the authority to order the municipality to convene such a meeting where appropriate.

In regard to minor variances and site plans, the OMB should also consider bringing the parties together for a brief meeting to explore settlement options. If a settlement is not possible, the OMB could require an immediate hearing to occur before another member or a panel of the Board. This approach is now being tried for certain selected appeals of minor variances, and it has been found that 70 to 80 percent of these cases settle.

For appeals of plans, zoning by-laws, and lot creation, standard procedure should be that within 30 days after the appeal has been received by the OMB, the Board should convene a procedural meeting of the parties,

chaired by a person assigned by the Board. This meeting would be for any one or a combination of the following purposes:

- to identify the parties;
- to correct misinformation;
- to confirm that relevant statutory requirements have been met;
- to identify whether intervenor funding will be applied for;
- to consider consolidating related matters in dispute;
- to discuss scheduling;
- to determine and simplify issues;
- to explore settlement possibilities;
- to exchange documents and reports;
- to estimate the length of any hearing that may be necessary.

A person assigned by the OMB to the meeting should be familiar with the case and be prepared to provide direction at the meeting. The objective should be to settle the matter or proceed with a hearing in a fair and expeditious manner.

Several courses of action may flow from the procedural meeting:

1. The Board may consider that the appellant does not have an objection which merits a full hearing, and it may order a time and place for the appellant to make representations as to the merits of the appeal, following a procedure comparable to that in section 34(25) of the *Planning Act* dealing with zoning matters. The Act should be amended to broaden the application of this section to all matters subject to appeal.
2. The Board may conclude a settlement seems possible, and it may set in process events to explore this option. The Board could appoint a mediator to assist. If a settlement is reached, it must be approved by the Board to ensure consistency with provincial and municipal policies.
3. The Board may conclude that a hearing is inevitable, and it should begin a process to narrow the issues, require an exchange of information, and encourage other methods to ensure the hearing will focus on the serious matters in dispute.
4. The Board may conclude that an application for intervenor funding will be made. Arrangements for the intervenor-funding hearing should then be made as quickly as possible.
5. The Board has the option of calling other meetings as required.

A Board member who conducts the procedural meeting should not preside at the application for intervenor funding, or at any disposition without a formal hearing (as described in point 1 above). A member who conducts intervenor-funding hearings or settlement meetings should not be involved in subsequent full hearings. A member involved in a procedural meeting where settlement is not discussed should be permitted to be involved in full hearings.

The Commission has already noted that decisions should be consistent with provincial policy. As well, development proposals should conform to municipal plans. These points should be major considerations in the Board's deliberations.

Other amendments to the *Planning Act* should be:

1. Unincorporated associations should be allowed to file appeals and appear before the Board.
2. As part of any decision, the Board should be authorized by the *Planning Act* to impose monitoring and other terms and conditions to protect the environment.
3. Board decisions should not be referred to Cabinet for any reason.
4. Where an objection to a municipal or an area plan, or to a comprehensive zoning by-law, is site-specific in nature, the appeal should be deemed to apply only to the property affected, and the Board should have the power to approve the remainder of the document.

Intervenor Funding

There are currently no provisions for intervenor funding for appeals to the OMB. This situation creates a hardship for those trying to protect the public interest. The Commission recommends that intervenor funding for appeals to the OMB be authorized by the *Planning Act* and be parallel to the provisions found in the *Intervenor Funding Project Act*.

The Act should state that intervenor funding may be awarded in relation to issues which, in the opinion of the OMB, affect a significant segment of the public and concern the public interest and not just private interests.

A funding panel of the OMB should be established to decide whether to award intervenor funding to an individual or a group. The panel should consider whether:

1. the intervenor represents a clearly ascertainable public interest that should be represented at the hearing;
2. separate and adequate representation of the interest would assist the Board and contribute substantially to the hearing;
3. the intervenor does not have sufficient financial resources to enable it to represent the interest adequately;
4. the intervenor has made reasonable efforts to raise funding from other sources;
5. the intervenor has demonstrated concern for this issue at the municipal level;
6. the intervenor has attempted to join together with other objectors;
7. the intervenor has a clear proposal for the use of any funds that might be awarded; and
8. the intervenor has appropriate financial controls to ensure that the funds, if awarded, are spent for the purposes of the award.

The funding panel should determine the source of monies needed for intervenor funding — the proponent, a municipality, the province, or a government agency — and determine the ability of that party to pay. Until legislation is passed, the province, in order to make intervenor funding available, should provide $500,000 annually for intervenor support.

Apart from any questions of intervenor funding, the Board should have the power to award interim and final costs to any party to an appeal.

Several other concerns about the OMB have been raised. Hearings before the Board have seen an increased emphasis placed on environmental issues and dispute resolution. Opportunities should be made available to Board members for more training in these areas. When the government makes appointments to the Board, these new areas of emphasis should be considered in the review of the skills and backgrounds of candidates. The Board must have adequate resources if it is to carry out its mandate, which does not necessarily mean more Board members are required. Rather, workloads should be monitored to ensure they are reasonable. Opportunities should exist for appointments of part-time Board members and mediators, particularly to conduct procedural and settlement meetings.

Complaints were made about the lack of Board representation from Northern Ontario, and suggestions were made that the Board be decentralized. However, owing to the limited size of the Board, it would be difficult to provide an efficient regional dispersal of members, particularly when hearings are held in the municipality where a matter is in dispute. For administrative purposes, the OMB has recently divided the province into three areas. As the Board works with this new structure it may find ways of achieving regional and administrative balance. Perhaps the appointment of part-time members and mediators from the North to deal with preliminary or settlement aspects of Northern appeals will prove a reasonable response to the concern about representation.

10
Other Issues

Many other issues have been brought to the attention of the Commissioners during the review of the planning system in Ontario. These issues, which will be discussed in this chapter, include the treatment of sewage; septics; the fiscal impact of development; school boards; land stewardship; activities on water; intensification; aggregates; and municipal restructuring.

Sewage Treatment

The treatment of human sewage is a major planning problem in Ontario, both in communities with sewage-treatment plants and for communities relying on private conventional septic systems.

There are 418 provincial and municipal sewage-treatment plants in Ontario, and 80 percent of them are currently operating at capacity. Communities frequently assume these plants are processing sewage adequately, but studies show that up to 25 percent of plants do not meet approved guidelines.

To address these and other water-quality problems, the Ontario government has undertaken the Municipal/Industrial Strategy for Abatement (MISA) program. Implementation has been slow and regulations for the municipal sector are still being developed.

The costs for remediating existing sewage-treatment infrastructure are significant. Currently, some $700 million is spent annually on capital investment by the province and municipalities in Ontario for water and sewage infrastructure (the province contributes about one-fifth of that amount). Estimates suggest that, for a 20-year period, doubling this sum would be needed to ensure problems are reasonably addressed.

In the United States, predictions are that the combined operating and capital costs of sewage treatment will increase elevenfold (on a per capita basis) within 20 years to meet the standards required by the U.S. *Federal Water Pollution Control Act*. In Ontario, increases will be more modest, perhaps tripling current figures.

Given the government's commitment to the MISA program and the fact that that program is soon to move from the study to the implementation phase, there is little new to recommend other than that the MISA regulations be put in place quickly and that implementation is speedy, consistent, and appropriately funded.

Septics

In Ontario, there are one million conventional septic systems. There is increasing evidence of contamination of both ground and surface water as a result of their use. In low-density situations, such as for individual farms or large holdings, septics appear to work satisfactorily if the systems are properly designed, constructed, used, and maintained.

Septics are generally good at treating moderate amounts of human waste, but reliability depends on proper use, maintenance, and pump-outs, as well as appropriate soil conditions. In principle, if conditions and use are appropriate, the system will work very well and process the sewage in ways that do not result in threats to human health or the environment. However, problems are now becoming apparent when too many systems are located close together on relatively small lots and used extensively for dishwashers, clothes washers, hot tubs, and other purposes that increase the volume of water and chemicals entering and leaving the system.

In 1990, the Ministry of the Environment inspected 9067 systems, of which 34 percent were found to be malfunctioning. Ministry studies in Haliburton and in Muskoka found one-third of the systems were designed to current standards and worked properly, one-third were designed below standards, and one-third were classifiable as a public-health nuisance.

Many suggestions made to the Commission to address septic problems concerned management and use. Among these suggestions: more should be done to educate owners of existing systems about proper use and potential problems and to ensure systems are properly maintained; inspections and pump-outs should occur regularly; inspections should be mandatory when houses using septics are sold; and use permits should be time-limited, based on the life-expectancy of the system.

There have also been useful suggestions about alternative systems, which include the compost toilet, the RUCK system, greenhouse systems, and engineered sand filter systems. (These alternative systems are described in *New Planning News*, July 1992.) Communal treatment facilities, which serve a large number of users, are also available. These and other technologies may be substitutes for the conventional septic system, but further research and development is needed to determine their suitability and standards for operation in Ontario.

To respond to problems about treatment of human waste, a number of recommendations by the Commission should help ensure that new development is adequately serviced. Water conservation policies, legislated requirements for studies on a watershed basis, and studies addressing infrastructure in municipal plans are important. For instance, few municipalities on full services now pursue water conservation policies. Some do not meter water, even though evidence suggests that metering reduces consumption by 25 percent. No municipality has a policy that requires low-flow toilets, and only a few municipalities are encouraging water-saving devices in showers and in the kitchen. Municipal policies and programs to conserve water will help reduce demand on existing sewage-treatment plants.

Inspections and the issuance of permits for private and communal systems are responsibilities of the Ministry of the Environment, which should continue to set standards for installation. The regular inspection of private and communal septic systems, after installation, should also be required. The Commission recommends that in Southern Ontario, the Ministry of the Environment consider entering into agreements permitting county and regional governments and separated municipalities

(with the appropriate expertise) to assume the responsibility for inspections and the issuance of permits. The cost of inspection should be charged to the owner. In Northern Ontario, these functions should primarily be the responsibility of the Ministry of the Environment, but in appropriate circumstances they could be delegated to cities, other municipalities, and health units.

Private septics should be inspected every three years and pumped out regularly. These regular inspections are a preferred alternative to inspection on sale or at the end of time-limited permits. Counties and regions should provide facilities for septage disposal; in Northern Ontario, this should be a local municipal responsibility.

In addition, information should be developed on the level of financial guarantees needed to address issues of capital replacement, maintenance, and liability for communal systems. The Ministry of the Environment should give a high priority to research on both acceptable communal systems for sewage and other private systems that might be used in Ontario.

Fiscal Impact of Development

One assumption commonly made by municipalities is that development should be approved because it "enlarges the tax base" and brings in more revenue, which lightens the tax load for everyone. With limited provincial and municipal funds available for infrastructure, this assumption is being challenged. For example, a number of development approvals have not proceeded to construction simply because provincial grants are not available for a water system or for larger sewage-treatment facilities. Municipalities are recognizing that new residential development may not expand the tax base significantly enough to cover its own costs. Development is often approved without adequate consideration of the additional expenses incurred for such public services as schools and health facilities.

A few studies are available to indicate that some development forms involve less initial and ongoing expenditure than others — medium-density mixed-use projects appear to be more cost effective, for instance, than low-density, single-use projects. Cluster development is more efficient in the use of municipal and provincial tax dollars than is scattered development, at least in some circumstances.

But the evidence for these conclusions is confusing, and the results are contentious. The quandary is not helped by the complicated array of both shared-cost arrangements for capital funding for infrastructure and cost-sharing or provincial subsidy for operating programs. The "disentanglement" exercise now being carried out by the province and the municipalities should help sort out some of these issues, as should the Commission's recommendation that the Interministerial Planning Committee review provincial grants and subsidies for conformity with the comprehensive statement of provincial planning policies.

In the interim, municipalities should pay much closer attention to the costs and benefits of development. Several proposed provincial policy statements recommended by the Commission require municipalities to address these questions, although doing the cost/benefit studies will not be without controversy, given the number of assumptions that will have to be made about funding arrangements or long-term costs. The Ministry of Municipal Affairs and Planning should undertake research in this area and provide municipalities with advice on methods of assessing the fiscal impact of development options and proposals.

School Boards

School boards have a significant interest in municipal development policies. As communities grow, boards must provide schools for the children who live in new housing.

In the past, the relationship between municipalities and school boards was relatively straightforward: the board responded to needs for more facilities by calling on the province for the funds required for new schools. But the level of financial support provided by the province in the past is no longer there, nor does the financial crunch seem to be temporary — it looks like it will be here for the foreseeable future. Lacking ready access to funds, boards no longer are able to take municipal decisions in stride.

The Commission has been made aware of several examples of boards not being able to respond to municipal development decisions. In Brampton, the decision to proceed with a 5000-acre development has meant the board should provide almost two dozen new schools, yet the board does not have adequate funding to build schools to take existing Brampton students out of 220 portables. In downtown Toronto, the board is unable to secure needed funds through development levies to renovate existing schools to meet changing student needs. The *Development Charges Act* does not contemplate using funds for non-growth-related renovations.

In the past, policies assumed that if a site in a subdivision had been designated for a school, the school would be built. Plans of subdivision were approved on that basis. Such an assumption is no longer valid. The Commission recommends that legislation require municipalities to have policies in the municipal plan addressing the "provision of educational facilities." Such a requirement would ensure that reasonable consideration is given to providing schools (and not just sites) in areas designated for development or redevelopment.

Several school boards have proposed to the Commission that when educational facilities cannot be provided, boards should be able to prevent new development from proceeding. The Commission recommends that boards should be notified of plans and development proposals for comment, but ultimately decisions about development should be made by municipalities.

Planning on broad questions at the upper level will provide the opportunity for a better relationship between planners for municipalities and planners for school boards.

It is also clear that boards need to undertake long-range planning in conjunction with municipalities, and together they should consider innovative approaches to providing school sites and facilities. Boards must also plan carefully with the Ministry of Education about financial needs — and such planning might require different approaches by the Ministry itself in determining, on a multi-year basis, exactly what capital funds are available and where they will be allocated.

Although these are important matters, they are beyond the Commission's terms of reference to address by way of recommendations.

Land Stewardship

Questions have been raised to the Commission about the ownership and control of natural features protected under policy proposals, the tax consequences of that protection, and whether compensation would flow as a result of changes in provincial or municipal policies.

As the Hon. Mr. Justice Estey of the Supreme Court of Canada said in a 1985 case: "Ordinarily, in this country, the United States and the United Kingdom, compensation does not follow zoning either up or down" (*The Queen in Right of British Columbia v. Tener et al* [1985] 1 S.C.R. 533, at p. 557).

Further principles established by the courts about zoning actions indicate that if the municipality acted in good faith, and if there was no intention to expropriate, and if there is no intention to interfere with the continued primary use of the site, then no claims for compensation flow from rezoning. The Commission has no intention to rewrite or reinterpret existing law.

To encourage the stewardship of some natural areas, the Conservation Land Tax Reduction Program permits property tax rebates to owners of certain wetlands, areas of natural and scientific interest, and several other types of natural features. The annual rebate paid to private owners is about $1.3 million, and only 15 percent of eligible owners apply for the rebate, perhaps owing to the small amounts actually involved. However, the program seems useful as another way to ensure good stewardship of natural heritage. It should continue.

An additional opportunity for the protection of natural heritage is the use of heritage and other trusts to accept easements and gifts of property. Several private trusts and foundations now exist in various parts of the province. The Ontario Heritage Foundation has been established for these purposes under the *Ontario Heritage Act*. The Commission supports these initiatives.

If a public body, agency, or recognized conservation trust or foundation is willing to assume responsibility for and control of a natural feature, an appropriate agreement should be worked out, including any rights of access that may be required. Even with increasing interest in conservation trusts and easements, it is expected that most natural heritage will remain in private ownership.

Land ownership implies responsibilities. The protection of natural heritage features is one of the obligations of ownership, as most owners recognize.

Activities on Water

More and more activities are occurring on the water in Ontario, and concerns have been raised that municipalities do not have appropriate controls over them. Boating has become a major recreational activity, and waterways often function in exactly the same capacity as highways — save that the controls on traffic and uses along highways simply do not exist for waterways. The opening of a marina can have a substantial effect on traffic and water quality in many municipalities, including development pressures in areas that were assumed to remain pristine because of a lack of road access.

Planning must address these issues, and appropriate changes should be made to legislation so that control is located where problems may be solved.

All navigation in Canada, including recreational boating, is controlled by the *Canada Shipping Act*. A 1972 Regulation under that Act is entitled the Boating Restriction Regulation.

The federal interest is mostly in commercial shipping and safety, not on issues such as noise, shoreline management, and erosion, or anchoring near cottages. The Regulation permits control over speed, waterskiing, and the use of power boats.

If a municipality wishes to impose a speed limit on a stretch of water, it must apply to the Office of Recreational Boating of

the Ministry of Natural Resources. MNR reviews each application, recommending to the federal government the ones it supports. Invariably, the requests made to Ottawa are all granted. Policing is by local policing agencies, such as the Ontario Provincial Police.

There are significant problems with this process. The province makes application to Ottawa only once a year, so each application is held until a single comprehensive submission of requests from across the province can be made. Ottawa considers requests from all provinces only once a year; if a problem exists with one application from anywhere in Canada, then all requests are held up. The time from application to final approval is usually two years.

In Ontario, the annual number of applications varies between six and twenty. Most applications are made by municipalities, but in unorganized areas the Ministry will take an application from a ratepayers group.

The province should negotiate with the federal government to delegate the administration of inland navigation to the province. The definition of "inland navigation" should include recreational boating, including that on the Great Lakes and the St. Lawrence River, but not commercial shipping. Federally managed areas, such as the Trent-Severn waterway, might be excluded from this delegation.

Discussions are being held within the provincial government about boating responsibilities being taken over by the Ministry of Transportation from the Ministry of Natural Resources. These ministries should determine which one will have responsibility for the transportation aspects of recreational boating. The appropriate ministry should meet with the Association of Municipalities of Ontario and affected municipalities to discuss administrative arrangements regarding requests for speed limits, signage, and general implementation including effective policing.

The uses permitted on land and the ways in which they are managed can have a significant effect on water. The uses on water can have just as significant an effect — on land and water — and should be controlled in the same manner.

Just as land uses must be regulated to ensure a fair balance of interests, water uses must also be regulated. The number of boats anchoring in a specific location is as much a concern as the number of trailers camping along the roadside. Municipalities should have the power to address these issues.

A number of distinct water and boating uses may require regulation, both to protect other boaters and to protect users of adjacent land. These include transportation, anchorage, swimming, racing, and protected wilderness. Examples of areas closed to swimming because of heavy boating use (and the resulting contamination of water) are now becoming unfortunately common. Many people complain about excessively loud boats and the manner in which some watercraft (such as jet-skis) can desecrate a calm shoreline and its rich supply of wildlife.

This whole subject is relatively new, and the opportunities for action are only now being explored. It will be important for various interests to work together to provide good examples of how numerous objectives can be resolved at one time to protect the natural heritage while providing varied recreational experiences.

Legislation should be amended to permit municipalities to plan for and place appropriate water-use designations on inland water bodies. The Ministry of Natural Resources should work closely with municipalities in developing and implementing these new designations.

The Ministry of Natural Resources has recently established several Lake Management units, which relate to large shorelines. It may be helpful if that Ministry were to bring together municipalities touching on larger watersheds in order to coordinate analysis and response to common problems. It has been suggested that a pilot project be made of the eastern shore

of Georgian Bay. In reference to earlier suggestions about a provincial role in area planning, this might prove a felicitous opportunity to combine interests in broader watershed studies, recreational boating, and water-use planning. The Ministry of Natural Resources should be asked to explore this opportunity.

Intensification

One concern that has been widely, although certainly not unanimously, expressed to the Commission is about intensification. Most planners, developers, and local councillors say they understand the reasonableness of making better use of the existing infrastructure, and in principle they agree with the need for intensification. However, they are not sure the public will accept intensification, and some members of the public say they don't want it. Municipalities need to respond to these concerns.

It should be noted that intensification need not occur in building forms that are out of keeping with existing neighbourhoods. Municipalities should use municipal plans, zoning by-laws, and design guidelines to set out the standards that intensification projects should meet. It is probably best to outline these standards on a neighbourhood basis.

Acceptable intensification would be more likely if developers knew what was expected and the community understood what generally might get approved. Issues to be addressed might include the relationship between existing and new buildings; questions of air, light, views, and privacy as they relate to building setbacks required from lot lines; new road and lane right-of-way widths; desirable mixes of use and tenure; standards for buildings that will face onto public thoroughfares; appropriate plantings; and procedures for dealing with soil contamination and air quality. Debating and agreeing on these issues in a general way without reference to a particular site allows for excellent community involvement and response.

Municipalities do not require special development-control tools to ensure acceptable intensification, since design guidelines, site-plan control, and zoning by-laws, appropriately applied, can deal with all concerns. Defining general policies about public involvement (forming working committees early in the process seems a good first step) is bound to help the process.

Representations have been made to the Commission about the management of intensified properties. This concern is most loudly expressed in university communities, where some landlords take the opportunity afforded by a large student market to create a number of apartments in a building. Without adequate management, the result can be an abnormal amount of noise and garbage, and an excessive number of automobiles.

Recent amendments introduced in the legislature provide municipalities with power of entry to ensure living standards are appropriate. These will deal with one concern. Current legislative provisions permit municipalities to establish maintenance and occupancy standards to deal with property maintenance and garbage issues. Other provisions respond to concerns about noise and parking. Municipalities should make good use of all these provisions, forcing owners and tenants to attend to problems or face the cost of municipal action added to taxes. In the Commission's opinion, no new powers are needed for municipalities to act effectively.

Aggregates

The Commission heard a number of submissions concerning aggregates. Most of them included complaints about present policy and practice.

In 1986, the current Mineral Aggregate Resources Policy Statement (MARPS) was approved, and in 1990 the *Aggregate Resources Act* was passed. It appears that many of the concerns raised with the Commission relate more to the Act than to policy. Three major concerns require mention here.

First, policies for aggregate resources conflict with other policies — such as the protection of wetlands, agricultural land, or significant natural features — and there seems no ready agreement on how these conflicts might be resolved. To date, the Commission's policy recommendations have favoured an arrangement that gives protected natural heritage features priority over the excavation of aggregate resources. Yet even if that recommendation is ultimately adopted by the government, questions will not be fully resolved. If there is no conflict, should aggregates be excavated in every case, or do other priorities come into play? The province should develop strategies about which deposits in particular areas should be brought into production first.

Second, there are many complaints about the management of extraction. Municipalities complain that the levies collected are very small (currently less than one percent of the costs of a delivered tonne of aggregates) and do not even cover municipal costs for the roads needed for access to pits. Residents complain about trucks, noise, and dust.

Third, there are significant problems with wayside pits. Applications for establishment of wayside pits do not require public notification. Some pits operate year after year, although the approval was given on the basis that they were to operate for a temporary period to meet specific project needs. Concerns about the lack of rehabilitation have been raised.

These questions on aggregates lie beyond the Commission's mandate, with the exception of some of the policy questions that the Commission has addressed, as noted. But the anger in the community is palpable, and the Commission recommends that the Ministry of Natural Resources form a task force which includes municipal and citizen representation to review these concerns and report before December 1, 1994.

Municipal Restructuring

As the Commission talked about the need for better planning, many individuals remarked that better planning would take place only once restructuring was accomplished. Restructuring involves redrawing municipal boundaries within counties. It was almost a chicken-and-egg situation, with argument about which came first.

Restructuring may be necessary in some situations, but much can be accomplished without it. Since restructuring is beyond the terms of the Commission's mandate, the Commission has devised solutions for good planning within existing structures — such as joint planning, planning at the upper tier of municipal government, and basing decisions on watershed studies. Thus, none of the Commission's recommendations should await restructuring before being implemented.

11
Transitional Matters

Transitional arrangements are important to ensure that no gaps are left in the journey from the old planning system to the new, and to ensure a phasing in of recommendations in a practical manner.

There are three stages involved in moving from the present system to that recommended.

Stage 1:

After the Commission's Final Report Is Submitted to the Minister

1. As a first step, the government should adopt a comprehensive set of provincial planning policies under section 3 of the existing *Planning Act*. This will ensure that new policies are immediately put in place to provide a context for planning throughout the province.

   These policies would become effective on adoption under section 3 and would apply to any plan or development proposal not fully approved at that time. Thus, the policies would apply to any decision approved by a municipality, but still awaiting approval at the provincial level. Since legislation will not yet have changed, decision-making authorities "shall have regard to" these policies.

   These policies should replace all ministerial policy guidelines, such as the "Foodland" guidelines and the "Growth and Settlement" guidelines. Implementation guidelines will remain for information purposes.

2. Cabinet should consider the Commission's final recommendations and provide direction for the drafting of legislation.

3. The Minister of Municipal Affairs will continue to approve plans, plan amendments, plans of subdivision, and plans of condominium, except where approval authority has already been delegated.

4. The Interministerial Planning Committee should be formally constituted. The Committee should, among other things, begin undertaking the recommended review of grants and subsidy programs.

5. The Minister of Municipal Affairs should establish the Development Standards Committee by appointing a chair and members after reasonable consultation with affected interest groups. A work schedule should be agreed to, and the modest funds required secured.

6. The Minister of Municipal Affairs should provide $500,000 a year for interim intervenor funding at the Ontario Municipal Board.

7. After reasonable consultation with affected interest groups, the Minister of Municipal Affairs should appoint committees — at least one for Northeastern Ontario, and one for Northwestern Ontario — to make recommendations on precise planning board areas for the North, consistent with the recommendations in the Report. These committees should be asked to report by fall 1993.

8. The Ontario Municipal Board should be asked to amend its procedures and rules in accordance with the recommendations in the Report.

9. In making planning decisions, municipalities "shall have regard to" the comprehensive set of provincial policy statements, once adopted by Cabinet.

10. Municipalities should begin (or continue) to work on strategic plans and appropriate watershed studies.

11. A protocol or agreement should be developed by Cabinet to give interested or affected Aboriginal communities notice of development proposals or changes in use or tenure of provincially owned land.

Stage 2:

After the Recommended Legislation Is Enacted, but Before New Plans of Regions, Counties, Planning Boards, Cities in the North, and Separated Municipalities Have Been Approved *

1. Cabinet should reconfirm and adopt the comprehensive set of policy statements under the new *Planning Act*, requiring decisions at all levels to be "consistent with" those policies.

2. The old Ministry of Municipal Affairs should be restructured to reflect the new functions recommended in the Report. The new Ministry of Municipal Affairs and Planning should be established.

3. The Ministry of Municipal Affairs and Planning and other ministries should provide advice to municipalities on the interpretation and application of provincial policy statements.

* The term "upper-tier municipality" means any county, or a regional, metropolitan, or district municipality. For discussion purposes, the roles and requirements of upper-tier municipalities noted here also apply to separated municipalities, cities in the North, and planning boards.

4. The Minister of Municipal Affairs and Planning will continue to have approval authority for all plans, plan amendments, and lot creation, except where that authority has been delegated. Requests may be made to the Minister for referral of any application to the Ontario Municipal Board. Where no ministerial decision is forthcoming within six months of submission of a completed application for approval, the matter must be referred to the OMB at the request of the applicant or the municipality.

5. The province should establish the grant programs recommended in this Report for new county plans, planning boards, and watershed studies.

6. The Minister of Municipal Affairs and Planning should establish the Provincial Planning Advisory Committee and, after reasonable consultation with affected interest groups, appoint a chair and members to the committee.

7. New planning boards in the North should be established, and existing boards appropriately expanded and changed. Boards should receive funds, retain staff, and initiate strategic planning and municipal plans.

8. The new lot-creation system should be implemented. Applications made under the old system would continue to be processed under that system. Once legislation is approved (a) where subdivision and consent authorities are already delegated: all applications will be dealt with at the upper-tier level; (b) where subdivisions are currently approved by the province and consents are currently approved by a municipality or planning board: until the upper-tier plan consistent with provincial policies is approved, the municipality or planning board may consider applications for division of a parcel into no more than two lots, and other applications will be subject to provincial approval.

9. The Minister of the Environment should establish the document for the Class Environmental Review (Class ER).

10. Regions, counties, planning boards, cities in the North, and separated municipalities with plans should review those plans and, within three years of the adoption by the province of a comprehensive set of policies, approve a plan consistent with those policies for ministerial approval. Until a consistent plan is approved by the Minister, provincial approvals will remain, and if a consistent plan is not adopted within three years, penalties should be set in place, such as limits on capital borrowing, ineligibility for certain conditional grants, and removal of authority for lot levies and any delegated approvals.

11. Counties and planning boards without municipal plans should develop and adopt plans consistent with provincial policies within five years. Until that occurs, provincial approvals would continue. After that time, the penalties noted above would apply.

12. Lower-tier plan amendments and planning decisions should be consistent with the comprehensive set of provincial policy statements. The review of upper- and lower-tier plans pursuant to the new policy statements should be coordinated so they can, as much as possible, proceed in conjunction with each other. If a lower-tier municipality approves a plan considerably in advance of approval of a plan by the upper tier, the Minister may approve such a plan.

Stage 3:

After the Plans of Regions, Counties, Planning Boards, Cities in the North, and Separated Municipalities Have Been Approved by the Province, Consistent with the Comprehensive Set of Provincial Policies*

1. Provincial ministries should provide ongoing advice to municipalities on the interpretation and application of provincial policies, including review of plans, plan amendments, and significant development proposals, for consistency with provincial policy. Ministries should develop guidelines concerning the kinds of applications for which notice is required.

2. The province, as well as members of the public, may appeal any municipal planning decision to the Ontario Municipal Board.

3. Upper-tier municipalities with a qualified planner on staff would be responsible for plans and plan amendments, subject to the limitations on site-specific amendments recommended by the Commission.

4. Upper-tier municipalities with a qualified planner on staff would be responsible for all lot creation, with the authority to delegate this function to lower-tier municipalities, provided a lower-tier plan conforming to the upper-tier plan is in place, and the lower tier has a qualified planner on staff.

5. The lower-tier plan must be brought into conformity with the upper-tier plan, and the first lower-tier plan consistent with provincial policy must be submitted to the upper tier for approval. If a lower-tier plan is not approved by the upper tier within six months, the lower-tier municipality may appeal to the Ontario Municipal Board.

   Subsequently, the lower-tier municipality would be responsible for its own plan amendments. The upper-tier municipality may appeal any lower-tier planning decision to the Ontario Municipal Board.

6. Planning boards with a qualified planner on staff would be given responsibility for building permits and zoning in unorganized areas.

7. Since needs and alternatives should already have been addressed in the new upper-tier plan, municipal infrastructure meeting the recommended definition of "class" should proceed under the Class Environmental Review (Class ER) process under the *Planning Act*.

* The term "upper-tier municipality" means any county, or a regional, metropolitan, or district municipality. For discussion purposes, the roles and requirements of upper-tier municipalities noted here also apply to separated municipalities, cities in the North, and planning boards.

Order in Council

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

The Government of Ontario recognizes that it is important that the people of Ontario have confidence in the planning and development process.

The Government of Ontario believes that the planning and development process should recognize and support environmental, agricultural and other public interests.

The Government of Ontario believes that an inquiry will provide policy recommendations which will assist the Government in making the planning and development process more fair, open and accountable.

Under the Public Inquires Act, R.S.O. 1980, c.411, the Lieutenant Governor in Council may, by commission, appoint one or more persons to inquire into any matter that the Lieutenant Governor in Council declares to be of public concern, if the inquiry is not regulated by any special law and if the Lieutenant Governor in Council considers it desirable to inquire into that matter.

The Lieutenant Governor in Council considers it desirable to inquire into the following matters which the Lieutenant Governor in Council declares to be of public concern.

The inquiry is not regulated by any special law.

Therefore, pursuant to the Public Inquiries Act, a commission effective on the 1st day of July, 1991, shall be issued appointing John Sewell, Toby Vigod and George Penfold, who are, without expressing any conclusion of law regarding the civil or criminal responsibility of any individual or organization:

1. to examine the relationship between the public and private interests in land use and development,

2. to inquire into, report upon and make recommendations on legislative change or other actions or both, needed to restore confidence in the integrity of the land use planning system, including the following matters:
   (a) improvements to the integrity, efficiency, openness, accountability and goals of the land use planning and development review system;
   (b) determination of the appropriate roles and relationships of elected officials, administrators, the development industry, interest and lobby groups, the public and the Ontario Municipal Board in the land use planning and development review system; and
   (c) protection of the public interest in planning and land development and support of provincial priorities, including environmental and agricultural considerations;

   In inquiring into these matters, the commission is to include the following in its considerations:
   (a) the effect of the development industry's concentration and structure on the ability of provincial and local governments to protect the public interest;
   (b) the appropriate role of provincial and municipal policy in achieving consistent and fair land use planning decisions and the need for any change in provincial legislation;
   (c) the adequacy of development control tools to implement public policy;
   (d) the impact of the municipal financing system and large scale infrastructure projects on local planning and development decisions, and

3. to consult widely, undertake research, foster dialogue and make recommendations on amendments to the Planning Act, 1983 and other relevant legislation and to undertake other actions needed to achieve its mandate.

Nothing set out above shall be taken as in any way limiting the right of the commissioners to petition the Lieutenant Governor in Council to expand the terms of reference to cover any matter that they may deem necessary as a result of information coming to their attention during the course of the inquiry.

All Government ministries, boards, agencies and commissions shall assist the commissioners to the fullest extent so that they may carry out their duties, and the commissioners shall have authority to engage such advisory services and other staff resources as they deem proper, at compensation rates approved by the Management Board of Cabinet, so that a complete report may be prepared for the Minister of Municipal Affairs.

The Ministry of Municipal Affairs and the Ministry of the Attorney General will be jointly responsible for providing administrative support to the commission of inquiry.

Part III of the Public Inquiries Act is declared to apply to this inquiry and to the commission conducting it.

John Sewell shall be the Chair of the commissioners.

The commissioners shall present an interim report to the Minister of Municipal Affairs by July 1, 1992 and provide the Minister with other interim reports as the Minister may request.

The commissioners shall complete their inquiry and deliver their final report to the Minister of Municipal Affairs by July 1, 1993.

Recommended:
Dave Cooke,
Minister of Municipal Affairs

Concurred:
Frances Lankin,
Chair

Approved and Ordered:
June 6, 1991
Lieutenant Governor
Lincoln Alexander

Ontario

Office of the Minister

Bureau du ministre

Ministry of Municipal Affairs

Ministère des Affaires municipales

777 Bay Street
Toronto, Ontario
M5G 2E5
(416)585-7000

777, rue Bay
Toronto (Ontario)
M5G 2E5
(416)585-7000

November 10, 1992

Mr. John Sewell
Chair
Commission on Planning and
Development Reform in Ontario
180 Dundas St. W., 22nd Floor
Toronto, Ontario
M5G 1Z8

Dear John:

I am pleased to tell you that I have agreed to consider the Commission's up-coming consultation on its revised goals and policies, to be published in December this year, to be the consultation for Policy Statements under section 3 of the Planning Act. It should be made clear to the public in your consultations that these are the Commission's goals and policies and have not been endorsed by the Government.

This approach means that when you present your final report, Cabinet can decide whether to adopt, amend or consult further on some or all of your recommendations, as is the case with other independent commissions. Specifically, it means that Cabinet, if it desires, can implement Policy Statements without conducting another extensive consultation.

To help Cabinet with these decisions, please include a full and detailed record of the public consultation, including copies of all written submissions, with your final report.

It should also be made clear during your consultation that the Government does not at this time contemplate making changes to the policies contained in the four existing policy statements. I am, however, aware that you are prepared to consult on ways in which the Land Use Planning for Housing Policy Statement could be strengthened to the benefit of affordable housing, and I look forward to receiving your recommendations on this, along with the views expressed by stakeholders during the consultation.

In the meantime, I wish the Commission every success with its up-coming consultation process and look forward to receiving your final report.

Sincerely,

Dave Cooke
Minister
M.P.P., Windsor-Riverside

New Planning for Ontario

John Sewell
Chair

George Penfold
Commissioner

Toby Vigod
Commissioner

Wendy Noble
Executive Director

Tom Moull
Senior Researcher

Greg Tokarz
Senior Planner

Laura Atkins
Planner

Dale Moore
Librarian

Allison Savaria
Assistant to the Chair

Elizabeth Sinclair
Secretary

Marilyn Gillis
Receptionist

Christine Mitchell
Correspondence

Inge Sardy
Administrator

Linda McClenaghan
Secretary

Diana Crosbie
Communications

Darlene Varaleau
Public Forum Coordinator

Ann Silversides
Editor

Dan Liebman
Copy Editor

Blair Kerrigan/Glyphics
Designer

Excelcom-Translex
French Translation

DRAFT REPORT FORUMS

If you want to make a presentation at a forum, please contact us at:

New Planning for Ontario
180 Dundas Street West,
22nd Floor,
Toronto, Ontario M5G 1Z8

Tel: (416) 325-8734
Fax: (416) 325-8739
Toll-Free: 1-800-267-4317

Your written comments on this Report will be welcome until March 26, 1993.

Public Forums in February and March 1993

Sessions: 1-4 p.m. and 7-9 p.m. On dates noted with an asterisk (*) there will be one session, 9 a.m.- noon.

February

Mon. 15 **Oshawa**
Oshawa Public Library,
65 Bagot Street

Tues. 16 **Newmarket**
Newmarket Community Centre,
221 Cedar Street

Wed. 17 **Parry Sound**
West Parry Sound District Museum,
17 George Street

Thurs. 18 & Fri. 19* **Owen Sound**
Bayshore Community Centre,
1900 3rd Avenue East

Mon. 22 & Tues. 23* **Toronto**
Metro Hall,
55 John Street

Wed. 24 **Mississauga**
Mississauga City Centre,
300 City Centre Drive

Thurs. 25 **Hamilton**
Hamilton Public Library,
55 York Boulevard

March

Mon. 1 & Tues. 2* **Ottawa**
Ottawa Congress Centre,
55 Colonel By Drive

Wed. 3 **Kingston**
Kingston Public Library,
130 Johnson Street

Thurs. 4 **Lindsay**
Lindsay Public Library,
190 Kent Street West

Mon. 8 **Chatham**
Chatham Public Library,
120 Queen Street

Tues. 9 **London**
Middlesex County Administration Building,
399 Ridout Street North

Wed. 10 **Guelph**
The Canadian Italian Club of Guelph,
135 Ferguson Street

Mon. 15 **Timmins**
Archie Dillon Sportsplex,
396 Theriault Boulevard

Tues. 16 **Sudbury**
St. Andrews Place,
111 Larch Street

Wed. 17 **Thunder Bay**
Ministry of Government Services,
189 Red River Road

Thurs. 18 **Kenora**
Inn on the Woods,
470 1st Avenue South

Ontario

New Planning for Ontario

John Sewell, Chair
George Penfold, Commissioner
Toby Vigod, Commissioner